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UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1991

Addendum

PORTUGAL
REPORT ON THE APPLICATION OF THE COVENANT IN MACAU* **

[1 March 1996]

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* The present document contains information submitted be the Government of Portugal on the application of the Covenant in Macau.

** The information submitted by Portugal in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.73).

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CONTENTS

	Paragraphs	Page
Article 1	1 - 11	3
Article 2	12 - 28	5
Article 3	29 - 33	14
Article 4	34 - 40	14
Article 5	41 - 43	16
Article 6	44 - 51	17
Article 7	52 - 65	18
Article 8	66 - 76	21
Article 9	77 - 91	23
Article 10	92 - 114	26
Article 11	115 - 117	30
Article 12	118 - 132	30
Article 13	133 - 142	33
Article 14	143 - 214	35
Article 15	215 - 218	49
Article 16	219 - 221	50
Article 17	222 - 244	50
Article 18	245 - 259	54
Article 19	260 - 278	56
Article 20	279 - 284	60
Article 21	285 - 298	61
Article 22	299 - 313	63
Article 23	314 - 340	65
Article 24	341 - 368	70
Article 25	369 - 431	74
Article 26	432 - 436	86
Article 27	437 - 447	87

List of annexes

Article 1

1. The status of the Territory of Macau is defined in both Portugal's and Macau's legislation by the 1976 Portuguese Constitution (PC) (annex 2) and the Organic Statute of Macau (OS) (annex 12) approved by Law 1/76 of 17 February and amended by Law 53/79 of 14 September and Law 13/90 of 10 May.

2. Under international law, Macau's status is defined by the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macau (annex 3) signed in Beijing on 13 April 1987, and by the United Nations decisions on the issue, namely the 1972 recommendation of the United Nations Special Committee on Decolonization concerning Macau's situation (see A/8723/Rev.1) and United Nations General Assembly resolution 2908 (XXVII) of 2 November 1972 approving the report of the Special Committee.

3. From the original 1976 version until the present, the PC has included specific provisions concerning Macau's situation with a view to defining the Territory's legal status according to the new Portuguese constitutional regime and in accordance with the above-mentioned international directives from the United Nations.

4. The Constituent Assembly which drew up the present Constitution - in which the Territory of Macau was expressly defined as such - included a fourth paragraph in article 5 of the Constitution under the heading "Territory", with the following text: "The Territory of Macau, under Portuguese administration, shall be governed by a statute adequate to its special situation." The PC clarified the situation once and for all and, in contrast to paragraph 1 of the same article, Macau was explicitly excluded from the national territory. Under the terms of this provision, the powers of the Portuguese State were defined as simple administrative powers. Although this was to change the internal framework, the Portuguese legislators were merely absorbing the theory which had already been recognized at international level by both the People's Republic of China and the United Nations, namely that Macau is Chinese territory under Portuguese administration.

5. The Sino-Portuguese Joint Declaration was to consolidate Portugal's and the People's Republic of China's existing understanding of Macau's legal character. Article 1 of the treaty states: "The Government of the People's Republic of China and the Government of the Republic of Portugal declare that the Macau area (including the Macau Peninsula, Taipa Island and Coloane Island, hereinafter referred to as Macau) is Chinese territory, and the Government of the People's Republic of China will resume the exercise of sovereignty over Macau with effect from 20 December 1999."

6. Similarly, article 2 of the Assembly of the Republic's resolution No. 41/92 of 31 December (annexes 10 and 11) reiterates that:

> "1. The application in Macau of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, namely article 1 of both Covenants, shall not in any way affect the status of Macau as defined by the Portuguese Constitution and the Organic Statute of Macau.

"2. The application in Macau of those Covenants shall in no way affect the provisions of the Sino-Portuguese Joint Declaration on the Question of Macau signed on 13 April 1987, namely insofar as it states that Macau is part of the territory of China and that the Government of the People's Republic of China shall resume the exercise of sovereignty over Macau with effect from 20 December 1999 while Portugal shall be responsible for the administration of Macau until 19 December 1999."

7. In the light of the Sino-Portuguese Joint Declaration, the 1989 review of the Constitution included a revision of the provisions concerning Macau and these have now been merged into a single article, article 292, under the heading "Statute of Macau", with the following text:

"1. While under Portuguese administration, the territory of Macau shall [remain under] a statute adequate to its special situation.

"2. The Statute of the Territory of Macau, embodied in Law No. 1/76 of 17 February, and incorporating the amendments thereto that were introduced by Law No. 53/79 of 14 September, shall continue in force.

"3. Upon proposal of either the Legislative Assembly of Macau or the Governor of Macau, the latter after having heard the Legislative Assembly of Macau, the Assembly of the Republic shall be empowered to amend or to replace the Statute after having sought the opinion of the Council of State.

"4. Where the proposal is approved with amendments, the President of the Republic shall not promulgate the decree of the Assembly of the Republic unless the Legislative Assembly of Macau or, as appropriate, the Governor of Macau, gives a favourable opinion.

"5. The Territory of Macau shall have its own judicial organization, autonomous and adapted to the specificities of that territory, in conformity with the law; the latter shall safeguard the principle of the independence of the judges."

8. Article 2 of the OS states, in turn that: "the Territory of Macau shall be organized as a juridical entity and, in respect of the principles and the rights, freedoms and safeguards established in the Constitution of the Republic of Portugal and this Statute, shall have administrative, economic, financial and legislative autonomy".

9. Under article 4 of the OS, the Territory's own governing bodies shall be the Governor and the Legislative Assembly. The Consultative Council operates alongside the Governor and is responsible for advising him on all matters concerning his duties or the administration of the Territory whenever the Governor deems it appropriate. With regard to the appointment of the Governor, article 7 of the OS states that the Governor is to be appointed and dismissed by the President of the Republic following consultation with the local population through the Legislative Assembly and representatives of social organizations. The consultation procedure provided for in article 7 is regulated in articles 180 to 183 of the Legislative Assembly's Regulations (annex 14).

10. The Legislative Assembly consists of 23 members appointed in the following manner: 8 elected by direct, universal suffrage; 8 elected by indirect suffrage; 7 appointed by the Governor from amongst local residents of recognized merit and standing in the local community.

11. It should be pointed out that all aspects of Macau's public life are strongly influenced by the notion of participation by and consultation with the population and representatives of social, cultural and economic interests. A fair reflection of this high degree of participation by and consultation with the population is that there are several consultative organs, such as the Council for Transitional Affairs, the Standing Committee on Coordinating Social Affairs, the Consumer Council, the Economic Council and the Education Committee, which place a heavy emphasis on participation. This subject is dealt with in greater detail in the information pertaining to article 25 of the Covenant.

Article 2

Paragraph 1

12. Article 13 of the PC upholds, fully and explicitly, the principle of equality of all citizens before the law, making special provision that: "no one shall be privileged, favoured, injured, deprived of any right or exempt from any duty because of his ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social condition" (para. 2).

Paragraph 2

13. Although Portugal's legislative bodies retain their powers with regard to Macau, the Territory's own governing bodies have special responsibilities for adopting the measures (namely, through legislation) intended to give effect to the rights recognized in the Covenant, as provided for in article 5, paragraph 1, of the Assembly of the Republic's resolution No. 41/92 of 31 December which extended the Covenant to Macau.

14. Issues concerning rights, freedoms and safeguards are, in effect covered by the powers of the Legislative Assembly and of the Governor, according to article 31, paragraphs 1 (b) and 5, of the OS.

15. In practice, even before the Covenant was extended to Macau, legislative bodies in Macau had, over recent years, been regulating the various fundamental rights provided for in the Covenant and the PC, as shall be seen in greater detail in the information pertaining to various articles of the Covenant.

16. Without providing an exhaustive list, the following legal documents which appeared after the signing of the Sino-Portuguese Joint Declaration should be noted:

(a) Decree-Law 31/87/M of 1 June, which established the Standing Committee on Coordinating Social Affairs to operate alongside the Governor as a tripartite consultative body with representatives from employers' and

employees' associations, intended to promote communication and harmonization between the Administration and these organizations in order to guarantee their participation in defining socio-economic policies (annex 15);

(b) Law 14/87/M of 7 December, approving the criminal law on corruption (annex 16);

(c) Governor's Orders 12/GM/88 of 26 January and 49/GM/88 of 10 May, concerning the importation of labour (annex 17);

(d) Law 10/88/M of 6 June, regulating electoral registration, altered by Law 10/91/M of 29 August (annex 18);

(e) Law 12/88/M of 13 June, defining the general regime for protecting consumer rights and creating the Consumer Council (annex 19);

(f) Law 21/88/M of 15 August, regulating access to the law and courts (annex 20);

(g) Law 24/88/M of 3 October, approving the legal framework of the municipal councils, altered by Law 4/93/M of 5 July (annex 21);

(h) Law 25/88/M of 3 October, approving the electoral system for the Municipal Assembly (annex 22);

(i) Law 26/88/M of 3 October, approving the status of office bearers in the municipalities (annex 23);

(j) Decree-Law 11/89/M of 20 February, establishing the use of Chinese in government documents (annex 24);

(k) Decree-Law 24/89/M of 3 April, approving the legal framework for labour relations in Macau, altered by Decree-Law 32/90/M of 9 July (annex 25);

(l) Decree-Law 128/89 of 15 April, published in the Official Gazette of Macau No. 20 of 15 May 1989, governing the validity of identity documents issued in Macau (annex 26);

(m) Law 7/89/M of 4 September, establishing the general framework for the regulation of advertising (annex 27);

(n) Law 8/89/M of 4 September, establishing the legal framework for television and radio broadcasting (annex 28);

(o) Decree-Law 59/89/M of 11 September, creating the Environment Committee (annex 29);

(p) Decree-Law 2/90/M of 31 January, regulating the entry, length of stay and establishment of residence in the territory of Macau (annex 30);

(q) Law 2/90/M of 3 May, establishing measures concerning illegal immigration, altered by Decree-Law 39/92/M of 20 July (annex 31);

(r) Law 7/90/M of 6 August, approving the Press Law (annex 13);

(s) Decree-Law 47/90/M of 20 August, approving the norms for publishing, identifying and formulating legal documents, altered by Decree-Law 23/93/M of 24 May (annex 32);

(t) Decree-Law 49/90/M of 27 August, regulating the issuing of Macau temporary residence permits and defining the legal implications, altered by Decree-Law 16/91/M of 25 February and Decree-Law 55/93/M of 11 October (annex 33);

(u) Law 11/90/M of 10 September, creating the High Commission against Corruption and Administrative Illegality (annex 34);

(v) Decree-Law 61/90/M of 24 September, defining the Organic Law of the Directorate of the Judicial Police of Macau (annex 35);

(w) Decree-Law 76/90/M of 26 December, defining and establishing the guiding principles and aims of domestic security activities, and the bodies, forces and intervention services involved (annex 36);

(x) Administrative Regulation 11/91/M of 28 January, regulating press registration (annex 37);

(y) Law 4/91/M of 1 April, approving the electoral systems for the Legislative Assembly of Macau (annex 38);

(z) Governor's Order 92/GM/91 of 25 March, approving the operating norms for the Security Council (annex 39);

(aa) Decree-Law 112/91 of 20 March, published in the Official Gazette of Macau No. 14 of 8 April 1991, unifying Macau's identification system by issuing a compulsory identity document for all residents, altered by Decree-Law 133/92 of 10 July, published in the Official Gazette of Macau No. 29 of 20 July 1992 (annex 40);

(bb) Decree-Law 28/91/M of 22 April, establishing the framework for extra-contractual civil liability of the Administration of Macau, public corporations, their office-bearers and agents in acts of public management (annex 41);

(cc) Decree-Law 31/91/M of 6 May, approving the Lawyers Statute, altered by Decree-Law 26/92/M of 4 May (annex 42);

(dd) Governor's Order 106/GM/91 of 27 May, institutionalizing improved communication systems between the Administration and Macau's citizens (annex 43);

(ee) Governor's Order 128/GM/91 of 5 August, approving the operating norms for the Security Coordination Bureau (annex 44);

(ff) Law 11/91/M of 29 August, establishing the general framework for education in Macau (annex 45);

(gg) Law 112/91 of 29 August, published in the Official Gazette of Macau No. 36 of 9 September, establishing the basic organization of the judiciary of Macau, altered by Law 4-A/93 of 26 February, published in the Official Gazette of Macau No. 9 of 1 March 1993 (annex 46);

(hh) Decree-Law 51/91/M of 15 October, approving the status and electoral regime for members of the Consultative Council (annex 47);

(ii) Decision of the Consultative Council of 2 October 1991, approving the regulations of the Consultative Council, published in the Official Gazette of Macau No. 41 of 15 October 1991 (annex 48);

(jj) Decree-Law 54/91/M of 21 October, establishing the rules for authorizing, practising and regulating the activities of private insurance companies (annex 49);

(kk) Decree-Law 455/91 of 31 December, published in the Official Gazette of Macau No. 2 of 13 January 1992, elevating Chinese to the status of an official language alongside Portuguese (annex 50);

(ll) Decree-Law 6/92/M of 27 January, regulating the issue of the new Macau resident identity card (annex 51);

(mm) Decree-Law 7/92/M of 29 January, approving the composition, organic structure and regime of the High Commission against Corruption and Administrative Illegality (annex 52);

(nn) Decree-Law 438/88 of 29 November, published in the Official Gazette of Macau No. 8 of 24 February 1992, approving the legal regime for passports (annex 53);

(oo) Decree-Law 11/92/M of 24 February, approving the regulations for the award and issue of passports in Macau (annex 54);

(pp) Governor's Order 16/GM/92 of 17 February, creating the Committee for Overseeing the Language Situation in Macau (annex 55);

(qq) Decree-Law 17/92/M of 2 March, approving Macau's judicial system (annex 56);

(rr) Decree-Law 18/92/M of 2 March, regulating the organization, powers, operations and procedures of the Court of Audit (annex 57);

(ss) Decree-Law 24/92/M of 22 April, regulating the installation, operation and maintenance of security alarms (annex 58);

(tt) Decree-Law 37/92/M of 13 July, regulating proof of residence for obtaining a resident's identity card in special cases (annex 59);

(uu) Decree-Law 51/92/M of 17 August, altering Decree-Law 79/84/M of 21 July, regulating the issuing of the national citizen's identity card in Macau (annex 60);

(vv) Decree-Law 55/92/M of 18 August, approving the statute of the magistrates of Macau's courts and the statute of members of the Macau High Council of Justice and the Macau Judicial Council and their organic structure (annex 61);

(ww) Law 16/92/M of 28 September, defining the rules governing confidentiality in communication and the right to privacy (annex 62);

(xx) Decree-Law 72/92/M of 28 September, reformulating and updating the norms concerning civil protection (annex 63);

(yy) Regulations for admission to the legal profession, approved by the Macau Lawyers' Association on 19 November 1992 and published in the Official Gazette of Macau No. 48 of 30 November 1992 (annex 64);

(zz) Governor's Order 121/GM/92 of 31 December, ratifying the Code of Ethics submitted by the Macau Lawyers' Association (annex 65);

(aaa) Decree-Law 11/93/M of 15 March, reviewing sanctions for the use, possession and carrying of arms (annex 66);

(bbb) Law 2/93/M of 17 May, regulating the right to meet and demonstrate in public places (annex 67);

(ccc) Resolution of the Legislative Assembly 1/93/M of 12 March, published in the Official Gazette of Macau No. 23 of 7 June, approving the regulations of the Legislative Assembly of Macau (annex 14);

(ddd) Decree-Law 30/93/M of 21 June, reorganizing the structure of the Legal Translation Office (annex 68);

(eee) Decree-Law 32/93/M of 5 July, approving the legal framework for Macau's financial system (annex 69);

(fff) Resolution 1/TC/M-93 of 25 May 1993, published in the Official Gazette of Macau, 1st Series, No. 30 of 26 July, approving the Administrative Rule of the Court of Audit (annex 70);

(ggg) Law 7/93/M of 9 August, approving the [Legislative Assembly] Members' Statute, altered by Law 10/93/M of 27 December (annex 71);

(hhh) Law 8/93/M of 9 August, approving the Organic Law for the Legislative Assembly (annex 72);

(iii) Law 64/93 of 26 August, published in the Official Gazette of Macau, 1st Series, No. 36 of 6 September 1993, establishing the legal framework governing conflict of duties and incompatibilities for holders of political office and high-ranking public officials (annex 73);

(jjj) Decree-Law 60/93/M of 18 October, partially altering the norms regulating employment in Territorial Security (annex 74);

(kkk) Decree-Law 357/93 of 14 October, published in the Official Gazette of Macau No. 43 of 25 October, defining the terms under which civil servants of Macau can be integrated into the Portuguese civil service (annex 75);

(lll) Announcement by the Urban Council (Leal Senado), published in the Official Gazette of Macau, 2nd Series, No. 46 of 17 November 1993, on places which can be used for meetings or demonstrations (annex 76);

(mmm) Announcement by the Island's Municipal Council, published in the Official Gazette of Macau, 2nd Series, No. 51 of 23 December 1993, on places which can be used for meetings or demonstrations (annex 77);

(nnn) Decree-Law 72/93/M of 27 December, regulating the activities of Parent-Teacher Associations (annex 78);

(ooo) Decree-Law 6/94/M of 24 January, establishing the training regime for magistrates and creating the Macau Magistrates' Training Centre (annex 79);

(ppp) Decree-Law 7/94/M of 24 January, defining the status of the post of judicial auditor (annex 80);

(qqq) Decree-Law 9/94/M of 31 January, establishing the regime for forensic and medical examinations required by law (annex 81);

(rrr) Decree-Law 14/94/M of 23 February, regulating the application in Macau of Decree-Law 357/93 of 14 October, recognizing the right of integration into the Portuguese civil service (annex 82);

(sss) Decree-Law 13/94/M of 21 February, creating the Economic Council (annex 83).

17. In addition to these provisions, a massive task of law reform is currently under way in an attempt to localize and adapt to the local situation legislation which is currently in force in Macau, with regard to the present "transition period". The principle areas in which legislative changes concerning those rights enshrined in the Covenant are being made are reforms to the Civil Code (annex 4), the Commercial Code (annex 5), the Civil Procedure Code (annex 6), the Criminal Code (annex 7) and the Criminal Procedure Code (annex 8), legislation on judicial organization and legislation on administrative procedure. The regulation of each constitutional right, freedom and safeguard in force in Macau is also being effected through specific laws.

18. The jurisprudence of the Constitutional Court - which has jurisdiction over Macau - should also be noted. This has already been discussed in Portugal's second periodic report (CCPR/C/42/Add.1 of 31 October 1988, paras. 162-165).

Paragraph 3

19. Article 18, paragraph 1, of the PC states that "[t]he constitutional provisions relating to rights, freedoms and safeguards shall be directly

applicable and binding on public and private bodies". Furthermore, article 22 of the PC stipulates that "[t]he State and other public bodies shall be jointly and severally liable under civil law with the members of their organs, their officials or their staff members, for actions or omissions in the exercise of their functions or caused by such exercise which result in violations of rights, freedoms and safeguards or in damage to another party". This provision is protected under local legislation through Decree-Law 28/91/M of 22 April establishing the law for the extra-contractual civil liability of the Administration, public corporations, their office-bearers and agents in acts of public management (annex 41). Finally, article 21 of the PC enshrines the right of any individual to "resist any order that infringes his rights, freedoms or safeguards and to repel by force any form of aggression when recourse to public authority is impossible".

20. With regard to the remedies available in the case of any violation of rights and freedoms recognized in the Covenant, the following should be mentioned in the area of rights and freedoms violated by administrative authorities:

(a) A complaint lodged with the Public Information and Assistance Centre (PIAC)*. Citizens may lodge complaints with the PIAC on matters pertaining directly to themselves and concerning acts or omissions by public services (Decree-Law 60/86/M of 31 December, articles 4-6 (annex 84));

(b) A complaint lodged with the High Commission against Corruption and Administrative Illegality (HCCAI). One of the HCCAI's responsibilities is to promote the protection of people's rights, freedoms, safeguards and legitimate interests and it may address recommendations directly to the relevant authorities with a view to remedying illegal or unjust administrative actions

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* The PIAC is a service provided by the Administration and is intended to promote fair, legal, prompt and efficient practice within the Administration. It has the following responsibilities:

(a) Receiving criticism and suggestions from citizens concerning the manner in which public services operate, directing these to the relevant departments;

(b) Accepting complaints from citizens concerning acts and omissions by public services, directing these to the relevant department and overseeing them until they are resolved;

(c) Providing information requested concerning the services provided by the Administration and directing citizens towards the various public services, depending on which services are offered and required;

(d) Disseminating information amongst the public concerning services provided by the Administration and the rights of those under administration;

(e) Ensuring communication between the other services of the Administration attending to the public in order to ensure complementary services (art. 4, para. 1, of Decree-Law 60/86/M of 31 December).

on the basis of information received in any form or manner (art. 3, para. 1 (c); art. 4 (m), and article 9 of Law 11/90/M of 10 September (annex 34));

(c) An administrative complaint. Individuals whose legitimate personal interests are deemed to have been violated by administrative actions may appeal to those responsible, requesting modification, suspension or revocation of the act in question (Decree-Law 23/85/M of 25 March, articles 25-29 (annex 85));

(d) Appeal for an administrative review by a superior administrative body. All administrative actions carried out by individuals who are subject to supervision by a higher office may be subject to appeal to that office requesting modification, suspension or revocation of the act in question, the reason given being the illegality, injustice or inappropriateness of the act (Decree-Law 23/85/M, arts. 30-38));

(e) Appeal for a judicial review of administrative action. Administrative actions giving rise to litigation may be reviewed in the competent courts. The examination and judgement of appeals against administrative actions by the Governor and the Under-Secretaries is the responsibility of the Supreme Administrative Court, while the Macau Administrative Court is responsible for judging appeals concerning other litigious acts of the Administration of the Territory (OS, art. 19; Law 112/91 of 29 August (annex 46), arts. 9 and 16; Decree-Law 23/85/M, art. 39);

(f) Appeal to the Constitutional Court from an individual case under litigation. In Macau the provisions of article 280 of the PC and article 70 of Law 28/82, of 15 November establishing the organization, operation and procedures of the Constitutional Court, altered by Law 143/85 of 26 November and by the Organic Law 85/89 of 7 September (annex 86), allow for appeals to be made to the Constitutional Court against the following decisions:

(i) Those rejecting the application of any provision on the grounds of unconstitutionality;

(ii) Those confirming the application of any provision, the constitutionality of which was questioned before that court;

(iii) Those rejecting the application of any provisions of a legislative act on grounds of violation of higher ranking law;

(iv) Those giving application to a provision, the legality of which was questioned before that court on the grounds of the preceding subparagraph;

(v) Those applying a provision which has previously been deemed unconstitutional or illegal by the Constitutional Court;

(vi) Those applying a provision which has previously been deemed unconstitutional by the Constitutional Committee, where the decision the Constitutional Court is requested to consider is on the exactly same point of law;

(vii) Those rejecting the application of a provision contained in a legislative act, on the grounds that it contravenes an international convention, or those which apply it in a manner other than that which has previously been decided by the Constitutional Court;

(g) Support appeal (recurso de amparo). The Law of Judicial Organization of Macau (hereinafter referred to as LJOM), recently introduced the support appeal for violations of fundamental rights guaranteed in the OS, as shall be explained in greater detail under the information pertaining to article 14 of the Covenant.

21. In the field of rights and freedoms violated by private individuals, mechanisms exist to safeguard and assert these with the possibility of appeal to the courts.

22. Further to the judicial safeguards mentioned above, namely judicial appeal against administrative actions, article 20 of the PC and article 2 of Decree-Law 17/92/M of 2 March (annex 56) enshrine the right of access to the courts. This right includes the right to appeal and the right to a court decision without undue delay. The legal right of access to the courts also includes the right for all activities directed towards the enforcement of the courts' decisions to be regulated by law (art. 208, para. 3, of the PC).

23. The general principle of law contained in article 8, paragraph 1, of the Civil Code should also be mentioned: "the court may not abstain from reaching a decision by claiming an omission or ambiguity in the law or by alleging an irremediable doubt concerning the facts in litigation". Furthermore, "the duty to obey the law may not be neglected under the pretext of the legislative provisions being unjust or immoral" (art. 8, para. 2, of the Civil Code).

24. As far as the guarantee to enforce sentences efficiently is concerned, it should be noted that "the decisions of Macau's courts shall be binding on all public and private bodies and shall prevail over the decisions of all other authorities" (art. 6, para. 1, of Decree-Law 17/92/M of 2 March, in the same spirit as art. 208, para. 2, of the PC).

25. Following the implementation of the Law of Judicial Organization of Macau (LJOM), the great majority of appeals concerning the rights and freedoms recognized in the Covenant is being judged in Macau with obvious benefits in efficiency and in safeguards to the parties.

26. According to article 6 of Decree-Law 17/92/M of 2 March, "the law shall regulate the terms in which court decisions are carried out by any authority and shall determine the sanctions to be applied to those responsible should they not be carried out" (para. 2).

27. Holders of political office, including the Governor of Macau, the Under-Secretaries of the Government of Macau and the members of the Legislative Assembly of Macau who, in the course of their duties, fail to observe or carry out a court decision pertinent to their office, shall be punished with a prison sentence of up to one year according to article 13 of Law 34/87 of 16 July (annex 87). Article 12 of the same law makes provision for anyone holding political office who refuses to administer justice or to apply the legal rights which, under the terms of his powers, he is responsible for administering, to be punished with a prison sentence of up to 18 months and a fine equivalent to 50 days' wages.

28. As far as the guarantee of reasonable dispatch of appeals lodged with the competent authorities is concerned, the right of access to the courts, contained in article 20 of the PC and article 2 of Decree-Law 17/92/M of 2 March, includes, as has already been mentioned, the right to a court decision without undue delay.

Article 3

29. Article 13 of the Portuguese Constitution (PC) states expressly that no one shall be privileged, favoured, injured, deprived of any right or exempt from any duty because of his sex. In addition to article 13 of the PC, there are several relevant examples of legislation mentioning the equal rights of men and women.

30. Citizens now have free access, regardless of sex, to judicial posts or the Public Prosecutor's Department, and to a career within the court system through Decree-Law 251/74 of 12 June, published in the Official Gazette of Macau No. 29 of 20 July 1974 (annex 88).

31. In the field of employment, Convention No. 100 of the International Labour Organization (ILO) dealing with equal pay for men and women performing work of equal value, has been adopted (Decree-Law 47,302 of 4 November 1996, published in the Official Gazette of Macau No. 50 of 10 December 1966 (annex 89)).

32. The labour relations law in force in Macau enshrines the principle of equality, ordaining that the right to work and the principle of equality imply the absence of any direct or indirect discrimination founded on sex, namely, any referent to marital status or to family circumstances (art. 4 of Decree-Law 24/89/M of 3 April (annex 25)).

33. With reference to women's participation in public life, it should be noted that the President of the Legislative Assembly, the Under-Secretary for Health and Social Welfare, three members of the Legislative Assembly (including the President) and 19 (out of 27) directors of public services are women.

Article 4

34. Article 19 of the Portuguese Constitution (PC) only allows the organs of supreme authority to suspend the exercise of rights, freedoms and safeguards in the case of a state of siege or a state of emergency, declared in the form

laid down in the Constitution, and without affecting the most relevant set of fundamental rights. As mentioned above, article 11, paragraph 1 (d), of the OS gives the Governor of Macau the power to take the necessary measures to restore peace and order if public security has been or may be endangered anywhere in the territory of Macau. Nevertheless, according to this provision, this power can only be exercised on the advice of the Consultative Council and, should it be necessary to restrict or temporarily suspend constitutional rights, freedoms and safeguards, the advice of the Legislative Assembly must also be sought beforehand. In the latter case, the President of the Republic must be informed of these measures forthwith.

35. The restriction or suspension of the exercise of constitutional rights, freedoms and safeguards provided for in the OS must respect the limits imposed by article 19 of the PC. The declaration of a state of emergency shall at most entail the suspension of some of those rights, freedoms and safeguards (art. 19, para. 3, of the PC). The declaration of a state of siege or a state of emergency provided for in article 19 of the PC must be substantiated and specify the rights, freedoms and safeguards whose exercise is to be suspended. Under no circumstances may it affect the rights to life, personal dignity and identity, civil capacity and citizenship of the person, the non-retroactive nature of criminal law, the right to defence of accused persons and freedom of conscience and religion (paras. 5 and 6 of the same article).

36. The choice of a state of siege or a state of emergency and ensuing declaration and implementation must respect the principle of proportionality and be limited to what is strictly necessary to promptly resuming the constitutional standards in terms of the scope of the decision, duration and the ways and means provided for (art. 19, para. 4, of the PC). During the time in which the OS has been in force in Macau, a state of siege or state of emergency has never been declared and it has not been necessary to adopt measures restricting or temporarily suspending the exercise of constitutional rights, freedoms and safeguards under article 19 of the PC and article 11, paragraph 1 (d), of the OS.

37. In turn, the regime for civil protection is regulated in Decree-Law 72/92/M of 28 September (annex 63). This law sets out the principles, aims, manner of execution and the limits of civil protection, understood as "an activity engaged in by the Public Administration of Macau and the citizens with the aim of preventing potential collective risks arising from serious accidents, catastrophes or disasters and to limit their effects and rescue persons in danger". The fundamental aims of civil protection are as follows:

(a) To prevent the occurrence of collective risks arising from serious accidents, catastrophes or disasters;

(b) To limit collective risks and their effects in the case of the circumstances described in the preceding paragraph;

(c) To rescue and aid persons in danger.

38. Decree-Law 72/92/M makes provision for the adoption of emergency measures. In the case of dangerous situations or serious accidents, catastrophes or disasters the following emergency measures may be implemented in order to safeguard normal living conditions:

(a) To prohibit or restrict the movements of persons or vehicles of any kind, within specified times and places, or to place certain requirements on these;

(b) To requisition any property and services;

(c) To occupy facilities and places of any kind, except personal residences;

(d) To suspend, limit or ration public transport, communications, water and electricity supplies and basic consumer goods;

(e) To close public services, except for those which must remain fully operational, without prejudice to the others, to those staff required for the civil protection plans and other staff deemed necessary and indispensable to the protection of the facilities;

(f) To mobilize civilians for specified periods of time in certain territorial areas or sectors, placing them under the control of the relevant authorities;

(g) To use special financial resources to support those authorities directly involved in providing assistance to victims (art. 4, para. 1, of Decree-Law 72/92/M.

39. The choice and effective application of emergency measures provided for in the preceding paragraph should observe the criteria of need, proportionality and suitability for the intended ends (art. 4, para. 2, of Decree-Law 72/92/M). When the requisitioning of property and services and occupation of facilities and places interferes with the rights or interests of any citizen or private body, he or it is entitled to compensation for damage caused (art. 4, para. 3, of Decree-Law 72/92/M).

40. With regard to anti-economic infractions and violations of public health, Decree-Law 41,204 of 28 November 1960, published in the Official Gazette of Macau No. 17 of 29 April 1961 (annex 90), stipulates in article 32 that the Government may "order the requisitioning of merchandise deemed indispensable to supplying producers, manufacturers or public consumption".

Article 5

41. Article 16, paragraph 1, of the Portuguese Constitution (PC) states that the fundamental rights embodied in the Constitution shall not exclude any other fundamental rights either in the statute or resulting from applicable rules of international law. Paragraph 2 of the same article ordains that the provisions of the Constitution and laws relating to fundamental rights shall be read and interpreted in harmony with the Universal Declaration of Human

Rights. Article 17 of the PC applies the constitutional regime of rights, freedoms and safeguards to similar fundamental rights referred to in other provisions of the PC.

42. Article 5, paragraph 2, of the Assembly of the Republic's resolution No. 41/92 of 31 December, which extended the Covenant to Macau, states that: "Fundamental rights in Macau shall not be restricted unless as prescribed by law and these restrictions may not exceed the applicable provisions of the Covenants."

43. In Macau there is no legislation in force which requires revision to bring it into line with the limits or restrictions imposed by the Covenant. Because the ordinary legislation in force observes the parameters of the PC, which are stricter in protecting civil and political rights than the provisions of the Covenant, it contains fewer restrictions or limitations on the exercise of fundamental rights than those permitted by the Covenant.

Article 6

44. Article 6 of the Covenant on the protection of human life places emphasis on the limiting and conditioning of the use of the death penalty.

45. The constitutional norms and laws in force in Macau safeguard the absolute protection of the right to life. The provisions of article 24 of the PC stipulate:

> "1. Human life shall be inviolable.
>
> "2. In no case shall the death penalty be applicable."

46. It should be noted that Macau was the first Asian territory known to have abolished the death penalty. In fact, as has already been mentioned in previous Portuguese reports, Portugal abolished the death penalty for all civil crimes in 1867, although this measure was not immediately extended to Macau and Portugal's other overseas provinces. Later, however, the Decree of 28 October 1868 published in the Official Gazette of Macau No. 2 of 11 January 1869 (annex 91), declared that "the law of 1 July 1867 concerning the application of the death penalty shall be applied in the overseas provinces". Accordingly, the Penal and Prison Reform included in the Law of 1 July 1867 was published in the Official Gazette of Macau No. 3 of 18 November 1869 in which it was expressly stated (art. 1) that "the death penalty has been abolished". Nevertheless, in view of the fact that some doubts arose in the Portuguese provinces in Africa as to the territorial effectiveness of the law abolishing the death penalty, the Decree of 9 June 1870 clarified the situation once and for all, stating expressly that the death penalty had been abolished in all overseas provinces. This Decree was published in the Official Gazette of Macau No. 34 of 22 August 1870 (annex 92), with the following text:

> "Article 1. The death penalty is hereby abolished for civil crimes in all overseas provinces.

"Article 2. Crimes formerly punishable with the death penalty must now be punished with the maximum penalty.

"Article 3. All legislation to the contrary is hereby revoked."

Thus, the death penalty for civil crimes was completely abolished in Macau and has not existed for the last 124 years.

47. With regard to the death penalty for military crimes, it should be noted that legislation in Macau has followed that of Portugal. The 1911 Constitution of the Portuguese Republic, published in the Official Gazette of Macau No. 39 of 30 September 1911, established, in article 3, paragraph 22, that "under no circumstances may the death penalty be introduced nor life imprisonment nor imprisonment for an unlimited period of time." It should be noted, however, that even before this date the death penalty was not being applied to military crimes.*

48. After Portugal entered the First World War, the death penalty was restored for military crimes, on an extraordinary basis and only for crimes committed in the field of operations. It was never applied in Macau (Law 635 of 28 September 1916, published in the Official Gazette of Macau No. 48 of 1916). The death penalty for military crimes was completely abolished when the PC was adopted in 1976.

49. Article 30, paragraph 1, of the PC states that "[n]one shall be subjected to a sentence or security measure involving deprivation or restriction of freedom for life or for an unlimited or indefinite term". The absolute protection enshrined in this right has as its corollary the fact that it cannot be affected should a state of siege or emergency be declared (art. 19, para. 6, of the PC).

50. Article 33, paragraph 3, of the PC in force in Macau prohibits extradition for "crimes which carry the death penalty under the law of the requesting State". Decree-Law 437/75 of 16 August, published in the Official Gazette of Macau No. 47 of 19 November 1977 (annex 93), further prohibits extradition when "the crime carries a life sentence in the requesting State and if no provision is made to replace that penalty" (art. 4 (a)).

51. Article 354 of the Criminal Code (annex 7) punishes providing assistance with suicide.

Article 7

52. Article 25 of the Portuguese Constitution (PC) states that "[t]he moral and physical integrity of the person shall be inviolable" and that "[n]o one shall be subjected to torture or to cruel, degrading or inhuman treatment or

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* For example, in the case of Macau, a decree with legal effect issued on 3 April was published in the Official Gazette of Macau, No. 23 on 10 June 1911 commuting a life sentence imposed on a soldier belonging to a European artillery company in the local barracks to the next most severe punishment.

punishment". The Constitution pays particular importance to the right to personal integrity and highlights the other principal legal provisions to this effect. Article 30, paragraph 5, of the PC stipulates that detainees and prisoners shall continue to enjoy their fundamental rights, save for those limitations that are inherent in the conviction and the requirements of its enforcement. Constitutional safeguards expressly cover criminal procedure, according to article 32, paragraph 6, which states that "any evidence obtained by torture, force, violation of the physical or moral integrity of the individual shall be of no effect".*

53. The guiding principles of the regime governing police measures are also influenced by the same framework of norms. Consequently, article 19, paragraph 6, of the PC states that, even in a state of siege or a state of emergency, the right to personal dignity shall not be affected. It links the declaration of a state of siege or a state of emergency and the subsequent police measures to the principle of proportionality. Measures must be kept within the limits of those which are absolutely essential and crime prevention should be ensured with a respect for the rights, freedoms and safeguards of citizens.

54. The above-mentioned constitutional framework has been broadly applied in Macau's legal structure.

55. Criminal law ensures the protection of the physical integrity of the person in several ways. The Criminal Code makes provision for and punishes the crimes of voluntary (arts. 359-366) and involuntary or negligent bodily harm (art. 369). The provisions for punishing voluntary bodily harm are also applied to those who intentionally administer toxic substances to another person with the intention of harming him (art. 364).

56. The law also specifically sanctions acts of violence in the course of public duties. According to article 299 of the Criminal Code, any public employee who, unnecessarily and without legitimate reason, uses or orders the use of violence against any other person shall be punished.

57. The law ensures protection of prisoners' and detainees' right to integrity of the person, against any form of illegitimate force by public agents (art. 293) and against violence by private individuals (art. 335). Bodily harm inflicted by private individuals with a view to coercing another individual to do or cease doing any action, shall be punished under the terms of article 229 of the Criminal Code.

58. The right to the integrity of the person is also protected by the regime of safeguards contained in criminal procedure. The Criminal Procedure Code (annex 8) forbids any person or body involved in criminal procedures to use force against the accused save in cases and within limits expressly established in law. The law similarly prohibits any interference with the free will or choice of the accused through ill-treatment, bodily harm, the use

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* As well as evidence obtained by wrongful interference in private life, the home, correspondence or telecommunications (see the information pertaining to art. 17 of the Covenant).

of hypnosis, or cruel or fraudulent means. Any measure which affects the memory or the sense of judgement of the accused is equally forbidden by article 261, paragraph 1 (a), (b) and (c), of the Criminal Procedure Code. Article 306 of the Criminal Procedure Code forbids any ill-treatment or violence by agents of authority against persons whom they are responsible for arresting. The law only permits the use of force or other unavoidable measures in order to effect and maintain an arrest if there is an attempt to resist arrest, or attempted or actual escape.

59. The right to the protection of the integrity of the person is particularly relevant in the sphere of security policies and the statutory law for police forces. The fundamental principles of domestic security activities are defined in article 2 of Decree-Law 76/90/M of 26 December (annex 36). Domestic security activities and crime prevention are carried out in observance of the general police rules and respecting rights, freedoms and safeguards. Furthermore, police measures must conform to the principles of legality and proportionality, and must not be used other than when strictly necessary (art. 2, para. 2, of Decree-Law 76/90/M).

60. The Code of Discipline of the Macau Security Forces (CDMSF), approved by Decree-Law 84/84/M of 11 August (annex 94), includes amongst the duties of employees and agents of the Macau Security Forces the duty to enforce public order through fair and reasonable procedures (art. 5, para. 19). The maximum disciplinary measures provided for in the CDMSF - compulsory retirement and resignation - may be applied, for instance, when aggression occurs within the workplace, or on public duty (art. 52, para. 2 (a)).

61. The Macau Security Forces is a blanket term covering the Fire Brigade and a further two police forces: the Public Security Police and the Maritime and Customs Police. The statutory laws for the latter two include a code of conduct according to which agents employed to serve the community must always be guided by respect for human dignity and the maintenance and promotion of the human rights of all citizens. The infliction, instigation or tolerance of any act of torture or inhuman, cruel or degrading treatment is expressly forbidden (art. 75 (b), of the Public Security Police Regulations, approved by Decree-Law 13/86/M of 8 February (annex 95), and article 68 (b), of the Maritime and Customs Police Regulations, approved by Decree-Law 14/86/M of 8 February (annex 96).

62. The Judicial Police is governed by identical principles. The Organic Law of the Directorate of the Judicial Police of Macau (Decree-Law 61/90/M of 24 September (annex 35)) dictates that staff employed by the Judicial Police of Macau must, amongst other special duties, prevent any arbitrary or discriminatory abuse involving physical or mental violence and protect the physical integrity of persons detained or in their charge and aid injured persons (art. 44, para. 1 (b), (f), and (h)). In the area of discipline, the Organic Law of the Judicial Police classifies inhuman, degrading, discriminatory or vexatious acts practised against persons under their protection or in custody as being serious and punishable by compulsory retirement or resignation (art. 46 a)).

63. The regime governing the use, possession and carrying of arms is given special attention within the framework of the protection of the right to

integrity of the person. The regulations governing the use of arms by members of the police forces are particularly significant. In the Macau Security Forces, the CDMSF imposes a special duty on the relevant employees and agents not to use arms except on superior orders or in a case of overriding necessity. In the latter situation, the law allows the use of arms when absolutely essential in averting aggression or the imminent prospect of aggression against the agent or other persons or public or private property, or to maintain or restore public order.

64. The Regulations of the Public Security Police and the Maritime and Customs Police provide greater detail of instances in which it is admissible to use firearms and regulate the procedures to adopt prior to and after using firearms. Prior, explicit and audible warning must be given when arms are to be used, so long as the situation and the nature of the service allow. Similarly, any agent who has used a firearm must, as soon as possible, assist or take steps to provide assistance to the injured and submit a written report on the use of the weapon to his immediate superior, even if no injury has occurred (arts. 88-91, of the Regulations of the Public Security Police and arts. 81-84 of the Regulations of the Maritime and Customs Police). The Organic Law of the Judicial Police also limits the use of arms to cases in which there is a serious risk to life or the physical integrity of the agent or third parties, or when public security is seriously threatened. The Organic Law of the Judicial Police also imposes the duty to provide prior warning whenever possible (art. 44, para. 2).*

65. It should be noted that the illegal use, possession or carrying of firearms by private individuals is subject to punishment which, in more serious cases, can include a prison sentence (Decree-Law 11/93/M of 15 March (annex 66)).

Article 8

66. The constitutional protection of personal liberty, embodied in the right to individual freedoms, security, physical and moral integrity, civil capacity and identity, means that any kind of slavery, servitude or captivity is inadmissible.

67. In terms of penal law, the Criminal Code (annex 8) makes provision for and punishes the crime of "holding a person captive" in article 328, and the crime of "private imprisonment" in articles 330 et seq. Article 333 makes special provision for the crime of private imprisonment by a public employee.

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* As a point of historical interest, note the Decree of 21 March 1895 published in the Official Gazette of the Government of the Province of Macau and Timor, vol. XLI, No. 19 of 11 May 1895, which abolished all forms of corporal punishment which were still in force and applied "in the navy and all services dependent on the Ministry of the Navy and Overseas Territories". Also worth mentioning is the Administrative Ruling 165/80/M of 13 September which establishes that "in view of the fact that hunting is increasingly placing the populations of Taipa and Coloane in danger, the practice of hunting in Macau is hereby forbidden from 1 January 1981".

68. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, signed in Geneva on 7 September 1956, was published in the Official Gazette of Macau No. 32 of 8 August 1959 (annex 97).

69. As has already been noted in Portugal's second periodical report (CCPR/C/42/Add.1, para. 337), Portugal banned the slave trade in its territory in 1836 and abolished slavery itself in 1858.

70. The "Royal Charter" of 20 March 1758 is of historical interest in that it prohibited the slavery of the Chinese.*

71. In the field of forced labour, other than the constitutional provisions mentioned above, Convention No. 29 of the International Labour Organization on forced or compulsory labour was published in the Official Gazette of Macau No. 42 of 20 October 1956 (annex 98).

72. The range of sentences provided for in the Criminal Code does not permit any sentence of forced labour (arts. 55-57). In accordance with the provisions of article 8, paragraph 3 (c) (i), of the Covenant, the law states that prisoners shall work according to their strength and abilities. Any labour shall be organized so as to promote the social reform and rehabilitation of the prisoner and allow him to learn or perfect a trade (art. 59 of the Criminal Code). Prison labour is paid and the product of remuneration shall be used in accordance with the regulations to heighten an awareness of the prisoner's social and ethical obligations and to facilitate his reintegration into free life once his sentence is complete (art. 59, para. 2, of the Criminal Code).

73. Article 261 of Decree-Law No. 26,643 of 28 May 1936 governing the organization of prison services and which was extended to Macau through Decree-Law 39,997 of 29 December 1954, published in the Official Gazette of Macau, No. 52 of 31 December 1954 (annex 99), states that all prisoners are obliged to engage in labour according to their strength and abilities. Detainees are free to choose the work they wish so long as it is compatible with the regime and conditions of the prison. The choice of work for each prisoner shall depend on his physical, intellectual and professional abilities, his conduct and the term of imprisonment, as well as the possibility of future employment and its potential moral influence. The

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* This "Royal Charter" states that "By the Law of the nineteenth day of February 1642, published in Goa in the month of April 1625, and immediately sent to the Magistrate of Macau, it has been decided that the Chinese neither may nor ought to be slaves. And as I have been party to certain information indicating that in order to avoid obeying this Law and the requirements of Natural and Divine Law according to which the Chinese are by nature free and neither may nor ought to be taken as slaves, different excuses have been contrived - I hereby command that as from the publication of this Charter, there shall be no more enslavement of the Chinese".

director of the prison must consult the prison doctor whenever the work is to be continued for a long time and may also use the services of professional guidance.

74. Prisoners must be engaged in productive labour. The legal framework and the terms according to which this labour is carried out are discussed in the information pertaining to article 10 of the Covenant. The exception provided for in article 8, paragraph 3 (c) (ii), of the Covenant is not relevant to Macau given that there are no military units or forces in the territory of Macau.

75. The law makes provision for a Territorial Security Service through the different corporations and organs of the Macau Security Forces but emphasizes the voluntary nature of the provision of this service (art. 2, para. 2, of the Territorial Security Service Regulations, approved by Decree-Law 34/85/M of 20 April (annex 100)).

76. The admissibility of exacting service in the case of emergency or calamity provided for in article 8, paragraph 3 (c) (iii), of the Covenant has been provided for in article 4, paragraph 1 (f), of Decree-Law 72/92/M of 28 September (annex 63) which allows for the mobilization of individuals for set periods of time if a serious accident, emergency or calamity occurs or is threatening.

Article 9

Paragraph 1

77. The right to freedom and security of the individual is provided for and protected in articles 27 and 28 of the Portuguese Constitution (PC). Article 27, entitled "Right to freedom and security", states clearly in its first paragraph the general principle of law: "Everyone shall have the right to freedom and security." This principle is also enshrined in the second paragraph of the same article in the PC which states that "[n]o one shall be deprived of his or her freedom, in whole or in part, except as a result of a court judgement sentencing him or her to a prison term or on account of an offence punishable by law or as a result of judicial application of a security measure." Several situations are presented in paragraph 3 of the same article, of which the following should be noted:

(a) Remand in custody where a person is taken in flagrante delicto, or where there is strong evidence that he has wilfully committed an offence punishable by a maximum sentence of over three years' imprisonment;

(b) The arrest or detention of a person who has unlawfully entered or stayed in the territory or against whom extradition or deportation proceedings have been instituted;

(c) Subjection of a minor to measures of protection, assistance or education in a suitable establishment, decided by the competent court;

(d) Detention by court order owing to disobedience of a court order, or to ensure appearance before the competent judicial authority.

Furthermore, general legislation ensures the effective protection of this right which we find detailed in articles 286 to 311 of the Criminal Procedure Code (annex 8).

78. Article 286 of the Criminal Procedure Code (in the same vein as art. 27, *para. 3 (a), of the PC) only permits* remand in custody in cases where the person is caught in flagrante delicto for crimes punishable by imprisonment or in cases involving a serious crime punishable by a major sentence. In flagrante delicto is used to describe any crime discovered in the act of being committed or having just been committed, and also for cases in which "the infractor is arrested by any other person immediately after the infraction, or has been found to have objects or indications clearly showing that he committed or participated in the crime" (art. 288 of the Criminal Procedure Code).

79. According to article 291 of the Criminal Procedure Code, remand in custody for cases other than in flagrante delicto is only permitted if three requirements can be met: the perpetration of a serious crime punishable by a major sentence, strong indications of the accused's involvement in the crime and fears that provisional release may lead to the accused absconding.

80. According to article 303 of the Criminal Procedure Code, "an individual may only be held in a detention centre on an order written, dated and signed by the competent authority and indicating the identity of the detainee and the reason for detention". Similarly, according to article 28, paragraph 2, of the PC, "remand in custody shall not be continued where it can be replaced by bail or by any other more favourable measure provided by law". This clearly reflects the secondary nature of this measure under the Constitution.

81. Finally, it should be mentioned that, according to the provisions of articles 291 and 292 of the Criminal Code, the crimes of illegal or irregular imprisonment shall be punished with sentences varying between three months' and two years' imprisonment in the former case and suspension of public duties for a period of up to one year in the latter.

Paragraph 2

82. As far as the right to be informed of the reason for arrest is concerned, article 27, paragraph 4, of the PC states that "every person who is deprived of freedom shall be informed, immediatley and in a comprehensible way, of the reasons of his or her arrest or detention, as well as of his or her rights".

83. Under general legislation, article 291, paragraph 3, of the Criminal Procedure Code states that the judge should give the accused the opportunity to appeal against the reasons for applying this measure prior to reaching a decision as to whether to place him on remand and should inform him of the means by which he can appeal. The constitutional provision is further developed in article 291-A of the same Code which states that "the judge must inform the detainee immediately of the reasons for his detention" and, in a similar form to that of article 28, paragraph 3, of the Constitution, that "a court order for a measure involving deprivation of freedom or for its

continuance shall immediately be made known to the person indicated by the prisoner, be it a relative of the latter or a person in his or her trust".

84. In accordance with the provisions of article 291, paragraph 5, of the Criminal Code (annex 7), "any judge who refuses to inform any person detained on his orders of the reasons for his arrest shall be punished with a prison sentence of between three months and two years".

Paragraph 3

85. All prisoners or detainees must appear before a judge, under the terms of article 28, paragraph 1, of the PC: "Detention without judicial charge shall, within forty-eight hours, be subject to the scrutiny of a court, for validation or continuation of detention; the court shall hear the reasons for the detention, inform the prisoner thereof, interrogate the latter and allow him or her the chance to defend him or herself." Although this norm is sufficient in its own right, it has still been included in general legislation. Consequently, article 311 of the Criminal Procedure Code states that "those held under arrest without formal charges shall be presented to the judge (...) within a maximum period of forty-eight hours after arrest".

Paragraph 4

86. The right of appeal to a higher court to re-examine the lawfulness of any detention order is dealt with extensively by the law. The general principle governing all criminal procedure is to be found in article 32, paragraph 1, of the PC: "[c]riminal proceedings shall provide all necessary safeguards for the defence". Article 31 of the PC gives to all those deprived of their liberty the opportunity to lodge a judicial appeal.

87. Here we find that the concept of habeas corpus has been constitutionally enshrined, thereby providing an effective safeguard of the right to liberty. In effect, the remedy of habeas corpus is guaranteed "before a court of law (...) against any wrongful use of power in the form of unlawful detention" (art. 31, para. 1, of the PC). The remedy of habeas corpus may be demanded by the prisoner or by any citizen in enjoyment of his political rights and the court should rule on the application for habeas corpus within eight days at a hearing in the presence of both parties (art. 31, paras. 2 and 3, of the PC).

88. The legal framework governing habeas corpus is defined in articles 312 to 325 of the Criminal Procedure Code. Thus, under the terms of article 315 of the Criminal Procedure Code, this provision may be applied in cases in which the accused is in prison when one of the following illegal situations has occurred:

(a) Imprisonment has been ordered or carried out by somebody with no legal power to do so;

(b) Imprisonment has occurred although the law does not authorize it in this case;

(c) Imprisonment has continued beyond the legal time-limits for a court appearance and formal charges;

(d) Imprisonment has continued beyond the time set for a court decision on the length of the sentence or security measure or its renewal.

89. Power to exercise jurisdiction in habeas corpus is given to the general jurisdiction department of the Superior Court of Justice (Tribunal Superior de Jusctiça) (art. 14, para. 3 (h); art. 15, a contrario, of Law 112/91 of 29 August (annex 46), and art. 33 of Decree-Law 17/92/M of 2 March (annex 56)). The Criminal Procedure Code also makes provision for another case in which habeas corpus may be applied. This is defined in article 312 which, in conjunction with article 52 of Decree-Law 17/92/M, allows for an appeal to be made to the President of the Superior Court of Justice to order the immediate appearance of the detainee in court when one of the following situations has occurred:

(a) The time-limit for presentation before a judge has expired;

(b) The accused is being held in a place other than one authorized for this purpose by law or by the Governor;

(c) Detention has been ordered by an authority with no power to do so;

(d) Detention has occurred for a reason not allowed by law.

Paragraph 5

90. Under the terms of article 27, paragraph 5, of the PC, any person who is imprisoned or held in detention illegally is entitled to receive compensation. This precept states that "any deprival of freedom in violation of the provisions of the Constitution and the law shall result in the State having the duty to compensate the aggrieved party in accordance with what is laid down by the law". Similarly, article 29, paragraph 6, of the PC states that "citizens who have been unjustly convicted shall have the right, under conditions to be laid down by law, to have their sentences reviewed and to be compensated for losses suffered".

91. In both cases, this is a corollary and an extension of the State's civil responsibility, under article 22 of the PC, for situations concerning jurisdictional powers with wider scope than those of the classic judicial error. Compensation for judicial error is also provided for by article 690 of the Criminal Procedure Code which makes provision for fair compensation for material and moral damages to prisoners who are subsequently found in a review of the sentence to be innocent.

Article 10

Paragraph 1

92. According to article 30, paragraph 5, of the Portuguese Constitution (PC), "persons who are sentenced to a punishment or a security measure involving deprivation of freedom shall enjoy the fundamental rights, save the limitations that are inherent in the sentence and the requirements

of its enforcement". This constitutional rule thus enshrines the general principle of maintaining all those rights recognized for citizens in the cases of persons deprived of their freedom.

93. Decree-Law 26,643 of 28 May 1936 which regulated the organization of prison services, extended to Macau by Decree-Law 39,997 of 29 December 1954, published in the 4th Supplement to the Official Gazette of Macau No. 52 of 31 December 1954 (annex 99), also establishes in article 229, a general principle for the entire prison service: "Prisoners shall be treated with justice and humanity and may not be subjected to useless humiliation or influences which could prejudice their social rehabilitation."

94. The humane, respectful treatment of all persons deprived of their freedom is also enshrined in the Codes. Article 293 of the Criminal Code makes "undue force against prisoners" a crime. The article states that "any public agent responsible for guarding a prisoner who uses undue force shall be punished with a prison sentence of up to six months and, if under law his acts are subject to a major sentence, this shall be imposed". Article 306 of the Criminal Procedure Code forbids "any authority or agent of the authority responsible for any kind of imprisonment from maltreating, insulting or using violence against prisoners and only in the case of resistance, escape or attempted escape shall force or another unavoidable measure be employed to overpower the prisoner or continue imprisonment".

95. Overall, the provisions available in law ensure the effective protection of prisoners' rights even though some of the norms contained in Decree-Law 26,643 of 28 May 1936 regulating prison services must be regarded as revoked due to their incompatibility with the provisions of the PC. Consequently, Macau's prisons are regulated by the Prison Regulations which follow to the letter the provisions of the Constitution, the Criminal Code and the Criminal Procedure Code.

Paragraph 2

96. Bearing in mind Macau's small size, the prison services are concentrated in the Coloane Prison Complex (hereinafter referred to as CPC) which comprises a female and a male prison in different buildings. In addition to prisoners being separated by sex, there is also a separation on the basis of age so that prisoners aged 21 or under do not come into contact with those who are aged over 21. This is achieved by housing each group in separate blocks. Furthermore, taking into account their legal status, those prisoners who are completing a sentence and those who are being held on remand are housed in separate blocks with absolutely no contact between them.

97. The physical and mental health of the prisoner also affects where he is to be accommodated. Consequently, those prisoners under medical observation and those in the prison clinic do not come into contact with the others, safeguarding the recovery of the former and the well-being of the latter.

98. Prisoners speaking the same mother tongue (Portuguese, Chinese or any other) are accommodated in the same wing, dormitory or group cell so as to allow greater communication between them.

99. Provision is also made to separate prisoners who could be victimized. These prisoners have been evaluated by staff and found to be particularly susceptible or vulnerable to pressure or hostility from other prisoners owing to their age, situation, or because of the kind of crime they have committed or stand accused of having committed. Prisoners who could be victimized are housed in single cells with different timetables from those of the other prisoners.

100. The general community of prisoners is divided into three major groups: maximum security (those with sentences of eight years or over), medium security (for those serving sentences of less than eight years) and low security (for prisoners who have served most of their sentence and shown reasonable behaviour). Prisoners' accommodation reflects these distinctions: maximum security prisoners are housed in single cells, medium security prisoners are held in cells holding three individuals, and low security prisoners are accommodated in dormitories sleeping 10 inmates.

101. In terms of medical facilities, the CPC has a clinic with both general and specialist doctors available on a visiting basis and a full-time nursing staff. When prisoners are received, they pass through a meticulous medical examination involving several tests leading to a clinical evaluation. The tests include detecting the presence of any infectious or contagious diseases such as AIDS, hepatitis and tuberculosis. Routine medical examinations are carried out amongst all the prisoners from time to time. The Female Section has special facilities for mothers and a service is provided for pregnant women.

102. The regime governing visits and correspondence is defined in the Prison Regulations. Prisoners may receive visits behind screens in a visiting room or, in certain situations, face to face. Visits from lawyers, notaries and members of the diplomatic corps are held in an appropriate room. Prisoners are allowed to send and to receive correspondence subject to inspection or censorship according to the law. Prisoners are also allowed to make a telephone call or send a telegram when they enter the CPC.

103. Article 59 of the Criminal Code discusses the issues of work, training and professional training, stating that "prisoners shall be obliged to work according to their strength and aptitude". Nevertheless, because there are fewer jobs available in the CPC than there are prisoners, this order has not been fully implemented. However, the right of all prisoners to paid work according to their professional status and their employment has been recognized. The CPC houses 10 workshops where various activities are available, namely carpentry, sawing, printing, electro-technical work, mechanics, foundry work, tailoring, cobbling, crafts and a laundry. The products of these labours are not sold but are intended to serve the needs of the prison itself and some public departments.

104. As far as education is concerned, prisoners aged under 25 who have not completed their basic education are obliged to attend classes at the appropriate level. At present, there are classes up to the sixth year of primary school and courses in Portuguese and English.

105. Free time is occupied with cultural activities, recreation and sports including weekly videos, football, basketball, gymnastics, table tennis and volleyball championships together with a games room offering Chinese chess and draughts. Artistic and cultural activities include a painting group, an art room and a music group which plays at parties during festivities at the CPC. There is also a lion dance group reflecting a strong Chinese tradition. The prison has its own library for the use of all prisoners and books may be read in the cells or dormitories. Newspapers and magazines may be read and radio and television broadcasts are permitted as prisoners are allowed to own their own televisions and radios. The prison publishes its own magazine for the prisoners, entitled Kaipou (Human Prison) which holds drawing and poetry competitions.

106. Relations between the management of the CPC and prisoners are regulated by the Prison Regulations. According to the Regulations, the prison director can contact prisoners directly whenever he deems this necessary or when the law so demands, and prisoners may approach the director individually (when he visits workplaces and accommodation) or request a private meeting in his office (by filling in a request form) to be arranged as soon as possible.

107. Moral and spiritual assistance is ensured in that prisoners are free to profess, study and practise their faith, for which purpose the CPC provides religious assistance for several faiths in a multipurpose room.

108. Social and family support is provided through the services of social workers whose goal is to study the behaviour of the prisoners, encourage their social rehabilitation, protect their relationship with their families, and prepare for their future integration into the labour market. This support is provided from the initial reception at which time there is a personal interview leading to an evaluation of the chief causes for the problems uncovered.

109. Prisoners are free to decorate their cells or dormitories and accommodation may only be inspected in their presence.

110. Prisoner discipline provides for the following sanctions which may be applied by the director: reprimand, loss of visiting rights, loss of correspondence rights, loss of recreation time and solitary confinement.

111. The regime for individuals being held on remand is the same as that for condemned prisoners except that they do not have to wear prison uniforms, their correspondence is not inspected or censored, and they are not obliged to take part in prison work.

Paragraph 3

112. According to Article 58 of the Criminal Code (annex 7), "when a custodial sentence is passed, attention should be paid, without prejudice to its repressive nature, to the social rehabilitation of the prisoner". In complying with this norm and its general guiding principle - the social rehabilitation of the delinquent - Macau's prison service operates in close

cooperation with the Department of Social Rehabilitation, a public department which is responsible for studying and implementing policies of re-education and social rehabilitation.

113. Article 69 of the Criminal Code refers to the special protection required in the case of young offenders, stating that "young offenders aged between 16 and 21 years of age shall serve their custodial sentences with the aim of educating them in a prison school or in a normal prison separated from the other offenders". In accordance with this legal imperative, the Prison Regulations state that the prison shall organize professional training courses with a view to the future release of prisoners and their social rehabilitation, particularly for those aged under 25. Under the terms of article 69 of the Criminal Code and the Prison Regulations, prisoners aged under 25 may be obliged to attend classes in Portuguese or Chinese if they are illiterate or have not completed compulsory education.

114. In accordance with the provisions of article 16 of Decree-Law 417/71 of 29 September published in the Official Gazette of Macau No. 42 of 16 October (annex 101), individuals under 16 years are not regarded as criminally responsible. Consequently, when a minor of under 16 is the agent in a crime or infraction punishable under the law, he may be subject to protective measures, social welfare or education as decided by a competent court. Should a minor be sentenced to internment in an educational establishment, this should be done in a young offenders institution, a public service aimed at the re-education and social rehabilitation of the minor, under the terms of article 13 of Decree-Law 1/90/M of 18 January (annex 102) in order to further "the implementation of jurisdictional measures decreed by the competent court which may decide on the observation and internment of minors aged under 16".

Article 11

115. In Macau, no one may be imprisoned for debt. Although there is no rule expressly prohibiting imprisonment for debt in Macau's ordinary legislation, this provision follows on from article 27 of the Portuguese Constitution (PC) which enshrines the right to freedom and liberty and lists by type those situations giving rise to deprivation of freedom, excluding imprisonment for debt.

116. The norms contained in articles 1, 8, 15, 27 and 54 of the Criminal Code (annex 7) should be noted in that they respect the principle of legal punishment.

117. Attention should also be paid to the provisions of articles 817 et seq. of the Civil Code (annex 4) where the possible civil measures for dealing with a failure to fulfil a contract are defined.

Article 12

118. Articles 33 and 44 of the Portuguese Constitution (PC) deal with freedom of movement and free choice of residence in conjunction with articles 14 and 15 of the same.

119. The regime governing entry, stay and settling in Macau is defined in Decree-Law 2/90/M of 31 January (annex 30). Individuals wishing to enter or leave Macau must hold valid passports or another of the documents described in article 4, paragraph 2, of Decree-Law 2/90/M. For those cases subject to the provisions of article 6 of the same law, a diplomatic visa or permission to enter may also be required. Under the terms of the OS, the Governor has the power to refuse entry to nationals or foreigners in the public interest, following consultation with the Consultative Committee (art. 16, para. 1 (g) and art. 48, para. 2 (e), of the OS). It may be possible to extend a stay in Macau when this is subject to time-limits (arts 12-17 of Decree-Law 2/90/M).

120. Right of abode is regulated in articles 19 to 32 of the same Decree-Law. Individuals intending to establish a right of abode in Macau should request this of the Governor in a substantiated document. The request shall be evaluated in accordance with the following criteria:

(a) The applicant's compliance with the laws in force in Macau;

(b) Means of subsistence;

(c) Aim and feasibility of staying in Macau;

(d) Family links with residents in the Territory.

121. Residence permits may be temporary, valid for one year and renewable for equal lengths of time, or they may be permanent in the case of an individual with seven consecutive years of residence in Macau. Those persons born in Macau of parents authorized by law to live in Macau at the time of their child's birth are free to enter, stay and settle in Macau (art. 2 of Decree-Law 2/90/M).

122. Entry to and departure from Macau is free so long as all citizens hold a valid passport and permission to enter or a visa, except for those who are exempted from the latter because of an agreement with their home country.

123. Those persons holding identity documents issued by Macau, a Portuguese Citizen's Identity Card, a safe-conduct issued by the People's Republic of China, Hong Kong Identity Cards, a Macau residence permit and other valid travel documents are free to enter and leave Macau without a passport or any other formality. The Public Security Police Immigration Service controls and inspects entries and departures of all individuals in Macau and issues entry visas to visit or stay in the Territory (Decree-Law 78/88/M of 15 August (annex 103)). The Immigration Service is also responsible for:

(a) Taking care of services dealing with entry, transit, stays and settling of foreigners or individuals from other regions of China in Macau;

(b) Issuing residence permits and certificates;

(c) Producing statistics on migratory flows;

(d) Issuing extensions of visas to stay in the Territory.

124. With particular reference to this subject, attention should be drawn to Decree-Law 438/88 of 29 November 1988, published in the Official Gazette of Macau No. 8 of 24 February 1992 (annex 53), dealing with the legal framework for passports, and Decree-Law 11/92/M of 24 February (annex 54), approving the regulations governing the awarding and issuing of passports in Macau. The latter law makes provision for three categories of passport which can be issued: normal passports, special passports and passports for aliens. The Macau Identity Services are responsible for issuing passports in Macau. Normal passports may only be issued to Portuguese citizens and the only obstacles to these being issued are opposition from the parents - in the case of a minor who has not reached majority - or from the judicial organs. Holders of passports for aliens are, amongst others, individuals who have been authorized to live in Macau and who are stateless persons, nationals of countries with no diplomatic or consular representation in Macau or Hong Kong, or those who can prove they cannot obtain another passport. These passports are valid for two years.

125. In addition to these passports, Portuguese nationals residing in Macau and aged over 16 may hold a safe-conduct. This travel document, regulated under the terms of Administrative Regulation 65/86/M of 22 March (annex 104), allows holders to visit Hong Kong and is valid for three years.

126. The Portuguese Citizen's Identity Card is the identity document which Portuguese citizens aged over 10 must possess under the terms of Decree-Law 79/84/M of 21 July (annex 105) and later amendments. It is valid under the same terms as the Identity Card issued in Portugal according to the provisions of Decree-Law 128/89 of 15 April, published in the Official Gazette of Macau No. 20 of 15 May 1989 (annex 26). It is valid for 5 or 10 years depending on the age of the holder.

127. The Resident's Identity Card is the main identity document for citizens residing in Macau and proves the identity and residence of the holder under the terms of Decree-Law 6/92/M of 27 January (annex 51). The nationality of the holder does not appear on the Resident's Identity Card. Possession of the Resident's Identity Card is compulsory for all residents of Macau aged over five, regardless of their nationality. The Resident's Identity Card is valid for between two and seven years depending on the age of the holder but it may not extend beyond 31 December 1998. Nevertheless, those Resident's Identity Cards issued after 1 January 1996 will not show the date of expiry.

128. Identity shall be checked by means of displaying either the National Identity Card or the Resident's Identity Card. No public body may retain or hold a valid identity card and after any check it must immediately be returned to the holder.

129. Police identity cards, which formerly could be obtained by any Chinese national living in Macau, are being replaced by the Resident's Identity Card as are the Foreign Citizen's Identity Cards.

130. Illegal immigration is a significant issue in Macau. The flow of illegal immigrants into Macau was particularly marked in the early 1980s. In March 1990, all persons without any form of documentation were recorded with a view to granting them a temporary stay permit. This permit is valid for a

year and is renewable for like periods. Under the terms of Decree-Law 49/90/M of 27 August (annex 45), amended by Decree-law 16/91/M of 25 February, and by Decree-Law 55/93/M of 11 October, holders of this permit are entitled to stay and work in Macau, they have access to health care under the terms of Decree-Law 24/86/M of 15 March (annex 106), and are entitled to register in government and private educational establishments and to obtain driving licences.

131. Individuals in Macau who are not entitled to establish residence but who are working in the Territory are issued with an identity permit for non-resident workers under the terms of Governor's Orders 12/GM/88 of 26 January and 49/GM/88 of 10 May (annex 17).

132. With regard to article 12, paragraph 4, of the Covenant, the proviso contained in article 4 of the Portuguese Assembly's resolution No. 41/92, under the terms of which this provision is not applicable to Macau as far as the entry and departure of people to and from Macau is concerned, this issue continues to be regulated in accordance with the applicable statutory and legal norms as well as the Sino-Portuguese Joint Declaration. This proviso is based on the need for the Macau authorities to have wide discretionary powers regarding the entry of people into the Territory, bearing in mind the fact that Macau is a focal point for neighbouring populations, hence the fact that the local population has doubled in the last 30 years due to this migratory flow.

Article 13

133. Article 4 of the Portuguese Assembly's resolution No. 41/92 states that article 13 of the Covenant is not applicable to Macau "as far as the entry and departure of persons and the expulsion of foreigners from the Territory are concerned, matters which shall continue to be regulated in accordance with the Organic Statute of Macau and other applicable legislation such as the Sino-Portuguese Joint Declaration on the Question of Macau". This proviso is founded on the same reasons as those presented with regard to article 12, paragraph 4, of the Covenant. The regime currently in effect is based on constitutional provisions which have already been discussed with regard to article 12, but which should be linked to the specific statutory and legal norms of Macau.

134. Article 16, paragraph 1 (g), of the OS gives the Governor power to "deny entry to or to expel, in accordance with the law, any Portuguese national or foreigner whose presence would seriously affect internal or international peace and order. The party involved shall have the right to appeal to the President of the Republic" following a hearing in the Consultative Council (art. 48, para. 2 (e), of the OS).

135. In terms of legal provisions, attention should be drawn to Law 2/90/M of 3 May (annex 31) on illegal immigration with the amendments introduced by Decree-Law 39/92/M of 20 July. Under the terms of this law, individuals who are not authorized to stay or reside in Macau are deemed to be in an illegal situation when they have entered under the following circumstances:

(a) Outside the official passport control;

(b) Not carrying any of the required documents;

(c) During the period of interdiction laid out in an expulsion order.

Those individuals who remain in Macau after the legally established time-limits are also regarded as illegal immigrants.

136. A repatriation order, issued by the Governor, should indicate the time-limit for conforming with it as well as the destination and period of interdiction for re-entry.

137. The general principles governing extradition contained in article 33 of the PC apply to Macau. Of these principles, those that "extradition shall not be allowed for political reasons", that "extradition for crimes which carry the death sentence under the law of the requesting State shall not be granted" and that "extradition may be decided only by a judicial authority" (art. 33, paras. 2, 3 and 4, respectively, of the PC) should be mentioned.

138. Decree-Law 437/75 of 16 August, published in the Official Gazette of Macau No. 47 of 19 November 1977 (annex 93) regulates extradition. This law, which should be interpreted in the light of the Constitution even though it predates it, states that extradition cannot be granted in cases in which:

(a) The crime has been committed on Portuguese territory;

(b) Criminal proceedings against the accused have been filed in a Portuguese court or the accused has already been judged on the basis of the facts which constitute the reason for the extradition request;

(c) The accused has already been judged in a third country for the crime which constitutes the reason for the request and has been found innocent or has served a sentence;

(d) Criminal proceedings or the sentence have lapsed or the crime has been subject to an amnesty according to the law of the requesting State;

(e) The crime is political in nature or extradition has been requested in order to persecute the accused on the basis of his race, religion, nationality or political opinions or where these causes could make the situation worse;

(f) The accused has been judged by a special court (tribunal de excepção);

(g) The accused is to be subject to proceedings offering no legal guarantees of procedures respecting conditions which are internationally recognized as essential to safeguard human rights, or will serve the sentence under inhumane conditions.

139. Extradition may be denied when the crime is punishable in the requesting State by life imprisonment where there is no guarantee that this will be reduced.

140. Requests for extradition are dealt with in two stages: firstly on an administrative level and secondly by court proceedings. On an administrative level, the request is examined in order to evaluate whether it should go to court or should be denied for political or other appropriate reasons. Should the request be denied, the matter is filed after the requesting State has been notified. Should the extradition request be approved on an administrative level, the court proceedings begin in Macau's Superior Court of Justice with the normal law of criminal procedure applied subsidiarily. The decision taken at the initial, administrative stage concerning whether or not the request should go to court in no way affects the court's decision. The judicial stage is dealt with solely by the court and is intended to decide, in the presence of the accused, whether or not extraditions should be granted on the basis of his condition and without allowing any proof concerning the relevant crime of which he stands accused to be used as evidence. An appeal may be lodged with the same court in the case of any decision to grant extradition. The extradition order is suspended for the duration of the appeal against the decision to grant extradition. Proceedings for extradition are free and continue during holidays.

141. The provisions of article 33, paragraph 6, of the PC are also applied in Macau, stating "the right of asylum shall be secured to aliens and stateless persons who are persecuted or seriously threatened with persecution as a result of their activities on behalf of democracy, social and national liberation, peace among peoples or individual freedom and human rights".

142. It should be noted that the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and approved by Decree-Law 43,201 of 1 October 1960, is published in the Official Gazette of Macau No. 44 of 29 October 1960 (annex 107). Compliance with the Convention was made with two restrictions: the first concerns cases in which the Convention provides refugees with the most favourable treatment given to nationals from a foreign country, a clause which is not interpreted as meaning the regime applied to nationals of Brazil, a country with which Portugal maintains special relations; second, with regard to the provisions of the Convention dispensing with reciprocal treatment, the constitutional principles on the subject take precedence.

Article 14

Paragraph 1

143. The principle of access to the Law discussed under this heading and contained both in article 52 of the OS and article 20 of the Portuguese Constitution (PC) is a fundamental element of the right to equality and consequently can be further divided into the right of access to the courts, the right to information and the right to legal assistance. The way in which these principles are protected is directly linked to the structure of judicial organization as a facility at the service of individuals whose interests require legal protection either from acts of other individuals or public offices.

144. In the second report of Portugal there is a discussion of the legal and constitutional principles which guide the administration of

justice (CCPR/C/42/Add.1, paras. 480-481) and it is these which are now in effect in Macau. For the first time in its history, Macau has its own judicial organization which operates independently and is adapted to Macau's specific sitaution. The process of localizing the judicial system effectively began when the PC was revised in 1989. The revised presentation of article 292, paragraph 5, in Constitutional Law 1/89, established that Macau should have its own judicial organization, autonomous and adapted to the specificities of the Territory, in conformity with the law, which shall safeguard the principle of the independence of the judges. The basic outlines of the judicial system were then integrated into articles 51 to 53 of the OS.

145. Article 52 of the OS states that "in the administration of justice the courts of Macau shall be responsible for ensuring the protection of legally protected rights and interests, preventing any breaches of legality and resolving conflicts between public and private interests". In turn, article 53 of the OS stipulates that:

> "1. The Macau courts are independent and are subject only to the law.
>
> "2. The independence of Macau's courts is safeguarded by the irremovability of the judges and their non-subjection to any orders or guidance other than the duty to respect decisions made following appeal to higher courts.
>
> "3. When judges are appointed for a set period of time, their independence is guaranteed for this time.
>
> "4. Judges cannot be held responsible for their decisions save in exceptional cases indicated by law.
>
> "5. The Public Prosecutor's Department is independent according to the law."
>
> The same principles are contained in articles 3 and 23 of Law 112/91 of 29 August, published in the Official Gazette of Macau No. 36 of 9 September 1991.

The principles presented in article 53 of the OS enshrine the rules contained in articles 205 et seq. of the PC, particularly article 205, paragraph 2 (sphere of jurisdiction) and article 206 (principle of independence of the court).

146. In the same vein as the provisions of article 218 of the PC, article 3 of Decree-Law 55/92/M of 18 August (annex 61) states that:

> "1. Magistrates may not be transferred, may not have their category changed, be suspended, retired, dismissed or undergo a change in their situation of any kind unless provided for by law.
>
> "2. When magistrates are appointed for a set period of time, their independence is guaranteed for this time."

147. The same law states, in article 5, paragraph 1, that "judges shall pass judgement only according to the law and shall not be subject to any guidance other than the duty for lower courts to respect decisions made following appeal to higher courts".

148. Article 6 of the same Decree-Law stipulates that:

> "1. Judges shall not be held responsible for their decisions.
>
> "2. Judges may only be subject, in the exericse of their duties, to civil, criminal or disciplinary responsibility in cases stipulated by law.
>
> "3. Other than cases in which the breach is a crime, the civil responsibility provided for in the preceding paragraph may only be effected by means of an action for the recovery of the amount by the Administration against the relevant judge."

149. By these means, all the conditions required for the independence of the judges are satisfied in the judicial organization of Macau: irremovability, freedom from responsibility and non-subjection to orders or guidance.

150. As can be seen, as Macau's courts are independent, so are the judges.

151. Law 112/91 of 29 August approved the Law of Judicial Organization of Macau (LJOM), defining and harmonizing the basic elements within the new system. According to the LJOM, the judicial organization of Macau includes courts with general jurisdiction and courts with administrative, fiscal, customs duties and financial jurisdiction (art. 5, para. 1, of Law 112/91). Following the enactment of this law, and in addition to primary courts, an Audit Court and the Superior Court of Justice were introduced (art. 6, para. 1, of Law 112/91).

152. The Superior Court of Justice (SCJ) is the highest organ within Macau's court system, without prejudice to the powers of the Supreme Court of Justice, the Supreme Administrative Court and the Constitutional Court to handle appeals (art. 11 of Law 112/91). The jurisdiction of these Portuguese courts in Macau, which is currently very rarely invoked, shall, according to the terms of article 75 of the OS, be retained until the President of Portugal decides that the Macau courts should be vested with full and exclusive jurisdiction. The SCJ is thus the highest local court with powers of general jurisdiction and jurisdiction over administrative, fiscal and customs duties matters (art. 11 of Law 112/91). The SCJ operates as a court of second instance and as a court of appeal (art. 6, para. 2, of Law 112/91). It consists of a president and six judges and hears cases either as a full bench or in divisions (art. 12, para. 1, of Law 112/91). Until such time as Macau's courts are vested with full and exclusive jurisdiction under the terms of article 75 of the OS, Macau's Superior Court of Justice shall consist of a president and four judges (art. 40, para. 1, of Law 112/91, amended by Law 4-A/93 of 26 February).

153. In Macau there are primary courts with general jurisdiction and jurisdiction over administrative, fiscal and customs duties matters (art. 7,

para. 1, of Law 112/91 and art. 18, para. 1, of Decree-Law 17/92/M of 2 March) (annex 56). Matters of general jurisdiction are now dealt with by the Court of General Jurisdiction and the Court of Criminal Instruction (art. 18, para. 2, of Decree-Law 17/92/M). The Court of General Jurisdiction has powers to deal with all cases which are not attributed by law to a specific court (art. 28, para. 1, of Decree-Law 17/92/M). The Court of Criminal Instruction has powers to deal with jurisdiction over preliminary inquiries, collect evidence, hear the accused and other witnesses and decide on the outcome of the case (art. 30 of Decree-Law 17/92/M).

154. Jurisdiction over administrative, fiscal and customs duties cases is the responsibility of the Administrative Court of Macau which must preside over cases and appeals aimed at resolving cases arising from legal relations involving administrative, fiscal and customs duties acts (art. 9, para. 1, of Law 112/91 and art. 18, para. 3, of Decree-Law 17/92/M). Similarly, the Court of Audit has jurisdiction and powers over matters concerning financial control under Macau's laws (art. 10, para. 1, of Law 112/91).

155. One of the innovations created by the new judicial organization is the support appeal (recurso de amparo). The LJOM stipulates that any decision by a court of Macau may be appealed in the Superior Court of Justice on the basis of a claim of a violation of the fundamental rights guaranteed by the OS. Direct appeals are limited to issues of violation of rights (art. 17, para. 1, of Law 112/91). This provision does not rule out the right to judicial review in the administrative courts in cases involving administrative action or simply de facto action by the public authority basing the appeal on a violation of the fundamental rights guaranteed by the OS (art. 17, para. 2, of Law 112/91).

156. The Public Prosecutor's Department is autonomous and enjoys independent status under law. It carries out the duties attributed to it freely and independently without any interference (art. 53, para. 5, of the OS; art. 23 of Law 112/91 and art. 8, para. 1, of Decree-Law 55/92/M of 18 August). The autonomy of the Public Prosecutor's Department is characterized by its links to criteria of legality and objectivity and by the exclusive subjection of its officers to the guidelines provided for in the law (art. 8, para. 2, of Decree-Law 55/92/M). Article 12 of the same law should also be mentioned as it enshrines the principle of responsibility of officers of the Public Prosecutor's Department. This consists of fulfilling their duties according to the law and following the guidelines provided for them.

157. Other than in cases involving crime, officers of the Public Prosecutor's Department can only be held civilly responsible for their actions by means of an action for the recovery of the amount against the relevant officer.

158. The status of the Public Prosecutor's Department is contained in Law 47/86 of 15 October, which is applied subsidiarily to the organization and status of the Public Prosecutor's Department of Macau in all aspects which do not contravene the LJOM and other relevant legislation, namely Decree-Law 55/92/M (art. 37, para. 2, of Law 112/91).

159. The Public Prosecutor's Department of Macau is responsible for:

(a) Defending the legality and procedures of criminal actions;

(b) Representing in law the Public Revenue Office, municipal councils, those who are incapacitated or cannot be located and other bodies decided by law;

(c) Giving advisory opinions in cases required by law or at the request of the Governor;

(d) Representing workers and their families in defending their social rights;

(e) Defending the independence of the courts and ensuring that the legal process conforms to the law;

(f) Promoting the implementation of court sentences to ensure their legitimacy;

(g) Directing criminal investigations, even when these are carried out by other organizations;

(h) Inspecting procedures of the criminal police bodies;

(i) Promoting crime prevention;

(j) Intervening in bankruptcy and liquidation proceedings and in all cases of public interest;

(k) Appealing against any decisions reached by the parties with the intention of defrauding the law or which violate the law;

(l) Carrying out any other responsibilities granted by law (art. 39 of Decree-Law 17/92/M and art. 14 of Decree-Law 55/92/M).

160. The management and discipline of the judges and agents of the Public Prosecutor's Department in Macau are ensured by the Judicial Council of Macau and the High Council of Justice of Macau (art. 26 of LJOM).

161. The High Council of Justice of Macau consists of the President of the Supreme Court of Justice of Portugal who is also president of this body, the Public Prosecutor of Portugal, a representative of the Minister of Justice and a representative of the President of the Republic, the Governor of Macau or an appointed representative, and two representatives of the Legislative Assembly of Macau (art. 29 of LJOM). The High Council has powers to manage and exercise disciplinary action over the magistrates and Public Prosecutor's Department operating in the Superior Court of Justice and the Court of Audit (art. 31 of LJOM).

162. The Judicial Council of Macau consists of the President of the Superior Court of Justice who is also president of this body, the Deputy-General Public Prosecutor, a lawyer elected by the lawyers of Macau and four persons of

recognized merit, two of whom are chosen by the Governor of Macau and two of whom are chosen by the Legislative Assembly of Macau (art. 27 of LJOM). The Council has powers to manage and discipline the judges and public prosecutors working in the primary courts and also judicial auditors (art. 28 of LJOM).

163. The role of lawyers should also be noted. According to the law, they cooperate in the administration of justice and are exclusively responsible, with the exceptions provided for by law, for the legal defence of the parties and the protection of individual rights and guarantees (art. 24 of Law 112/91 and art. 44 of Decree-Law 17/92/M). Decree-Law 17/92/M strengthens some important principles of procedure such as the principle of public hearings and the principle of obligatory judicial decisions.

164. Hearings in Macau's courts are public unless the court decides otherwise, in a substantiated decision, in order to safeguard personal dignity and public morality or to ensure that the hearing proceeds normally (art. 5, para. 1, of Decree-Law 17/92/M). The sentence is pronounced at a public hearing (art. 5, para. 2, of Decree-Law 17/92/M).

165. The decisions of Macau's courts are binding on all public and private bodies and shall prevail over the decisions of all other authorities (art. 6, para. 1, of Decree-Law 17/92/M).

166. As has already been discussed in the information pertaining to article 2 of the Covenant, any holder of political office, including the Governor of Macau, the Under-Secretaries of the Government of Macau and the members of the Legislative Assembly of Macau, who, in the course of his duties, fails to respect or implement a court sentence, shall be punished with imprisonment of up to one year under the terms of article 13 of Law 34/87 of 16 July (annex 87). Article 12 of the same law punishes any holder of political office who, in carrying out his duty, refuses to administer justice or to apply the rights which he is responsible for administering, according to his powers, with imprisonment of up to 18 months and a fine of up to 50 days' wages.

167. For as long as the Governor of Macau or the Under-Secretaries of the Government of Macau remain in office, civil and criminal cases to which any of these holders of political office is party shall be settled in Lisbon unless another court has jurisdiction; such a tribunal shall not be from Macau (art. 20, para. 3, of the OS).

168. Both the principle of prohibition of transferral out of a jurisdiction, according to which no criminal case may be removed from a court whose jurisdiction has been fixed by a previous law, and the accusatorial principle, under which any judge who has been involved in the preliminary proceedings or preparation of a case shall be prevented from taking part in the trial, should be noted (arts. 15 and 19 of Decree-Law 17/92/M).

169. Appointment as a judge in primary courts and as delegates of the Public Prosecutor must be preceded by completion of a training course (art. 23 of Decree-Law 55/92/M). The structure and organization of the training course are regulated in Decree-Law 6/94/M of 24 January (annex 79), in which a Training Centre for Macau Magistrates with academic autonomy is set

up (arts. 14 to 22). The course will last 18 months and shall be open only to persons who, in addition to complying with the general requirements for employment in the Macau Civil Service, also have the following qualifications:

(a) A degree in Law from the University of Macau or from another establishment which is legally recognized in Macau;

(b) Recognized standing within the community;

(c) Residence in Macau for at least three years;

(d) A knowledge of Portuguese and Chinese (arts. 2 and 10 of Decree-Law 6/94/M).

170. After the judicial system was reorganized by Law 112/91, the post of judicial auditor was created (art. 19). Its status is defined in Decree-Law 7/94/M of 24 January (annex 80). The judicial auditor advises and assists the judges and staff of the Public Prosecutor's Department employed in the primary courts and the Court of Audit of Macau (art. 2 of the same legislation). The judicial auditor has no powers to engage in jurisdictional actions and may only assist in the preparation of cases and in the judgement (art. 2, para. 3).

171. With regard to access to the law, the general principle expressed in article 2, paragraph 1, of Decree-Law 17/92/M should be noted, ensuring the right of all citizens to have access to the law and the courts to defend their rights and legitimate interests, and that they may not be denied justice simply owing to a lack of financial resources.

172. Law 21/88/M of 15 August (annex 20) lays the foundation of the system of access to the law and the courts. The system is designed to prevent people encountering obstacles to making known, affirming or protecting their rights because of their social or cultural status or lack of financial resources, under the terms of paragraph 1 of the law. Access to the law and the courts is the joint responsibility of the Government and the members of the legal profession, and the Government shall ensure reasonable recompense for the members of the legal profession involved in the system.

173. The law makes provision for four kinds of intervention: legal information, legal protection, legal consultation and legal support.

174. With regard to legal information, the Government's aim is to make the law and legal system known to the public through publications and other means of communication in Portuguese and Chinese, in order to facilitate a better understanding of the rights and duties established by law (art. 5 of the above-mentioned law). Individuals and collective persons without sufficient financial resources to pay the fees of a member of the legal profession and the costs of a court action are entitled to legal protection under the terms of article 7 of the same law. The regime covering legal aid is outlined in Administrative Regulation 11,502 of 2 October 1946, and Decree-Law 33,548 of 23 February 1944, published in the Official Gazette of Macau No. 13, of 29 March 1947 (annex 108). Legal aid for civil cases consists of free advice and exemption from prior payment of expenses. In criminal cases, the

prosecution or other persons whom the law deems able to file an action are entitled to legal aid when the legal action depends on a de querela accusation or private request. Poor litigants and public utilities are entitled to legal aid in obtaining legal advice. A legal aid committee consisting of a representative of the Public Prosecutor who shall be chairman, and a further three members, is responsible for evaluating requests for legal aid.

175. Legal consultation is provided by the Office for Legal Consultation which is a government department in cooperation with the Public Information and Assistance Centre and the Office for Legislative Affairs.

176. More detailed information is given under the material pertaining to article 25 of the Covenant.

Paragraph 2

177. Article 32, paragraph 2, of the PC states that "everyone charged with an offence shall be presumed innocent until his conviction has acquired the force of res judicata, and he shall be tried in the shortest space of time compatible with defence safeguards". There is a myriad of implications arising from this principle which are enshrined in Macau's legislation.

178. First of all, contrary to what occurs in civil procedure in which both parties are responsible for introducing the necessary information for resolving the case, in criminal procedure the principle of investigation reigns supreme and the Public Prosecutor's Department is ultimately responsible for this. Consequently, given that the preparation of the evidence for the case is the responsibility of the prosecution, any reversal of the onus probandi to the detriment of the accused is forbidden (art. 9 of the Criminal Procedure Code). Should the prosecution have insufficient proof of the guilt of the accused, the court must dismiss the case due to lack of evidence (art. 286 of the Criminal Code) in accordance with the principle of in dubio pro reo. This principle acquires greater significance if seen in the light of the treatment given to prisoners held on remand under legislation dealing with criminal procedure. Until the final judgement the prisoner benefits from the presumption of innocence.

179. Prior to the court decision, but from the moment in which there is good reason to suspect the accused's involvement in a crime punishable by criminal law, certain precautionary measures are taken, as distinct from genuine sentences, of which remand in custody is applied in the most serious cases. Remand may only be authorized in cases of flagrante delicto or a serious crime subject to a major prison sentence (art. 286 of the Criminal Procedure Code). The legal definition of flagrante delicto is given in articles 286 and 288 of the Criminal Procedure Code, provided above in the information pertaining to article 9, paragraph 1, of the Covenant. Other than in cases of flagrante delicto, remand can only be authorized when a serious crime punishable with a major prison sentence has been committed, there are strong indications of the accused's involvement in this crime and that provisional release will not facilitate the smooth progress of the case (art. 291 of the Criminal Procedure Code).

180. A re-examination of the reasons for holding a person on remand should take place every three months in order to decide whether the measure should be continued, replaced with another, or revoked (art. 273-A of the Criminal Procedure Code). If the legal requirements for remand are not met, the judge may, taking into account the nature of the crime, the damage caused and the circumstances of the accused, decide that he may enjoy provisional release while awaiting trial if he provides proof of identity and residence and, in the case of crimes subject to prison sentences of over one year, bail (arts. 269-274 of the Criminal Procedure Code). Should the accused be unable to post bail, or undergo extreme difficulty and inconvenience in providing it, bail may be replaced with an order to appear before the court or any other authority appointed by the judge at set times on set days (art. 272 of the Criminal Procedure Code).

181. In order to limit as far as possible the deprivation of the right to freedom on the basis of administrative procedures, article 28, paragraph 1, of the PC states that "[d]etention without judicial charge shall, within 48 hours, be subjected to the scrutiny of a court, for validation or continuation of detention; the court shall hear the reasons for the detention, inform the prisoner thereof, interrogate the latter and allow him or her the chance to defend him- or herself". The same article states that "a court order for a measure involving deprivation of freedom or for its continuance shall immediately be made known to the person indicated by the prisoner, be it a relative of the latter or a person in his or her trust".

182. A concern with dealing with cases promptly is also reflected in article 308 of the Criminal Procedure Code which establishes a maximum term for remand in custody.

183. From arrest to notifying the accused of the accusation or the request for a case to be filed by the Public Prosecutor's Department, no more than 40 days may pass in cases involving crimes subject to a major prison sentence, and 90 days when investigation of the crime is the exclusive responsibility of or has been delegated by law to the Judicial Police (art. 308, para. 1, of the Criminal Procedure Code). From notifying the accused of the accusation or the request for a case to be filed by the Public Prosecutor's Department to the announcement of the indictment arising from the primary investigation, remand in custody may not exceed four months if the crime is subject to a sentence corresponding to de querela proceedings, in other words, over two years' imprisonment (art. 308, para. 2).

184. After charges have been pressed, remand should cease when it reaches half the maximum duration of the sentence for the most serious crime of which the prisoner stands accused and may, under no circumstances, exceed two years (art. 273, para. 1, of the Criminal Procedure Code). Should the time-limit for remand be exceeded, habeas corpus may be claimed, under the terms of article 31 of the PC and articles 312 et seq. of the Criminal Procedure Code, by the detainee or any other citizen in enjoyment of his political rights, and the judge must reach a decision within a maximum period of eight days. (The regime of habeas corpus is explained in further detail in the information pertaining to art. 9, para. 4, of the Covenant.)

185. Article 27, paragraph 5, of the PC states the right of the injured party to claim compensation from the State in cases of deprivation of freedom in violation of the provisions of the Constitution and the law.

186. An appeal may be lodged against the judge's decision to impose remand in custody under the terms of article 645 of the Criminal Procedure Code.

187. The principle of presumption of innocence until proven guilty means that persons held on remand are treated differently from the other prisoners in the Coloane Prison, as has been discussed in the information pertaining to article 10 of the Covenant. Consequently, articles 21 et seq. of Decree-Law 26,643 of 28 May 1936, extended to Macau by Decree-Law 39,997 of 29 December 1954, published in the 4th Supplement to the Official Gazette of Macau No. 52 of 31 December 1954 (annex 99), make provision for separating prisoners held on remand from other prisoners. Nevertheless, this situation is not limited to confining them to their respective cells and they are allowed and encouraged to carry on other activities.

188. This Decree-Law, with the amendments introduced by Decree-Law 45,610 of 12 March 1964, published in the Official Gazette of Macau No. 13 of 28 March 1964 (annex 109), also makes provision for prisoners held on remand to choose any work they wish so long as it is compatible with the prison regime and conditions. They are entitled to engage in intellectual work although this may have no obvious product (art. 262).

189. According to prison rules, prisoners held on remand are entitled to use their own clothes so long as they clean and keep them in order.

190. Decree-Law 43,809 of 20 July 1961, published in the Official Gazette of Macau No. 33 of 19 August 1961 (annex 110), approving the Code of Overseas Judicial Expenses, states that when the accused is the subject of a partial pardon involving various breaches, he shall be liable to pay only that portion of the costs of proceedings which corresponds to the sentence (art. 144, para. 4). If the accused is found not guilty, he shall not be liable to pay the costs of proceedings. If the accused is condemned wholly or partially, the costs of proceedings he must pay are calculated and decided upon in the final judgement, taking into account his financial means and the limits set for the procedure corresponding to the most serious crime of which he stands accused (art. 144 of the same law). If the accused lodges an appeal in a higher court against the judgement and is regarded as being entirely justified, the costs of proceedings shall not be applied, even if the sentence is maintained (art. 144, para. 5).

Paragraph 3

191. Sub-paragraph (a). If there is sufficient evidence that a punishable fact has occurred, and the identity of the persons involved and responsible for it is known, the Public Prosecutor's Department and/or an assistant shall file a case (art. 349 of the Criminal Procedure Code). When the accusation has not been preceded by a contradictory indictment, the accused being held under arrest or their lawyers shall be informed within 24 hours or, should there be no accused held under arrest, within five days (art. 352 of the Criminal Procedure Code).

192. Sub-paragraphs (b) and (d). The right of the accused to choose his own counsel and to be assisted by him at all stages in the proceedings is also enshrined in the PC (art. 32, para. 3, of the PC). When the law determines that the accused must be assisted by counsel and he has none, then the judge shall be responsible for appointing one. In this case, the appointed lawyer shall represent the accused in the subsequent proceedings. If no lawyer is available, the judge shall appoint a person of merit and standing. If at any point the accused chooses to defend himself, the duties of any counsel appointed officially by the judge shall cease (art. 22, paras. 1-3 of the Criminal Procedure Code).

193. The accused may appoint his own counsel at any point in the proceedings (art. 49 of Decree-Law 35,007 of 13 October 1945, extended to Macau in Administrative Regulation 17,076, published in the Official Gazette of Macau No. 14 of 4 April 1959 (annex 111).

194. Counsel must be present at the judgement of provisional indictment in de querela proceedings and at interrogations of an accused person held on remand (art. 253 and 268 of the Criminal Procedure Code and art. 49 of Decree-Law 35,007 of 13 October 1945). If counsel has been appointed by the judge, he may only be replaced at the request of the accused with good reason, and under no circumstances may he abandon his client without a suitable replacement having been found (art. 22, 26 and 27 of the Criminal Procedure Code). Lawyers may visit accused persons being held in prison.

195. Sub-paragraph (c). In article 2 of the Criminal Procedure Code the principle of sufficiency of criminal action is enshrined, according to which the primacy of criminal jurisdiction is established with regard to all issues which could delay criminal action. On the other hand, the main concern of the legislation on criminal procedure is, as has already been mentioned, to ensure maximum protection for persons held in custody without formal charges. Hence the overriding concern with processing these cases without undue delay.

196. Sub-paragraph (e). "Witnesses shall be questioned as to the alleged facts by the representatives of the prosecution and the defence while the president and judges of which the tribunal consists shall ask those questions they deem necessary to clarifying the truth" (art. 435 of the Criminal Procedure Code). If, in order to clarify the truth, it is deemed necessary to interrogate a witness about a new element which has not been alleged, this questioning may proceed only if the president of the tribunal allows it (art. 435, para. 1, of the same Law).

197. Sub-paragraph (f). If the accused does not speak Portuguese or is a deaf-mute, the judge shall appoint an interpreter who shall, on oath, translate the questions for him and also the answers for the judge. The same applies to witnesses and/or persons making statements (art. 260 of the Criminal Procedure Code). Nevertheless, contrary to the case in Portugal, the need for court interpreters in Macau is not limited to those individual cases indicated in article 260 but is rather a daily necessity given that most of the population neither speak nor understand Portuguese.

198. The fact that, until recently, Portuguese was the only official language has meant that the operation of the legal system is based on the Portuguese

language. This, added to the high number of cases in which there is a need for interpreters, has meant that at the moment there is an imbalance between the material resources available in the courts and the requirements of users. Furthermore, note should be taken of the fact that the judges and public prosecutors working in Macau's courts function only in Portuguese with no command of Chinese. The same is true of lawyers. Only around 20 per cent of lawyers speak Cantonese and very few read or write Chinese. Most of the judicial employees neither read nor write Chinese even though they can speak Cantonese.

199. Those interpreters-translators working in the courts carry out their duties without receiving any legal training or support. There are currently six interpreters-translators working in Macau's courts: three in the Court of General Jurisdiction, two in the Criminal Court and one with the Public Prosecutor's Department. Given these limitations and other conditions apparent in Macau's courts at present, efforts are being made to reinforce human and material resources in the Legal Translation Office* which will permit this department to ensure simultaneous interpretation in hearings of criminal cases. Work has also begun on translating into Chinese various documents and judicial forms, predominantly relating to criminal procedures, and training courses have been introduced for interpreters and translating staff in the courts.

200. Sub-paragraph (g). Article 254 of the Criminal Procedure Code, establishing the norms for interrogating accused persons held in custody, stipulates that after a person has been requested to provide personal information and informed of the facts of which he stands accused, he will be notified by the judge "that he is under no obligation to answer the questions put to him concerning the relevant case or the content of any statement he gives with regard to the same". Consequently, the accused is allowed either to reply or remain silent, to confess to or deny the facts or to indicate the circumstances under which they occurred and which could in some way justify his behaviour (art. 254, para. 4, of the Criminal Procedure Code).

Paragraph 4

201. Young people may be charged under criminal law from 16 years of age and they are consequently subject to the criminal law should they be accused of involvement in criminal activity (art. 16 of Decree 417/71 of 29 September, published in the Official Gazette of Macau No. 42 of 16 October 1971 (annex 101), approving the Statute for Legal Assistance for Minors Overseas). Despite there being no autonomous regulations on this matter, criminal law

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* The Legal Translation Office is a branch of the Public Administration and is responsible for planning, coordinating and carrying out the work of legal translation, and also for promoting the use of Chinese as an official language in legislative and court procedures. The Legal Translation Office has seven translation teams composed of jurists trained in the Portuguese and the Chinese systems, translators and scholars, with a total of around 40 trained staff.

makes provision for special treatment for young people aged between 16 and 21. This special treatment is enshrined in articles 39, 69, 107 and 108 of the Criminal Code.

202. In determining the sentence for a minor, the fact of being under 18 or 21 is regarded as a relevant factor in his criminal responsibility (art. 39, para. 3, of the Criminal Code), with the corresponding sentence adjusted in the light of this. The maximum sentence may not exceed 16 years of imprisonment for minors under 21 and 8 years of prison for minors under 18.

203. Article 69 of the Criminal Code states, in the application of the sentence, that: "Young offenders aged between sixteen and twenty-one years of age shall serve their custodial sentences with the aim of educating them in a prison school or in a normal prison separated from the other offenders".

204. In the case of more serious crimes, young offenders may only have their sentences postponed for two successive periods of two years (art. 69, para. 1, of the Criminal Code).

205. Young offenders aged over 16 and under 18 years of age with previous good behaviour, given their first custodial sentence, may be held in a young offenders institution for the duration of the custodial sentence (art. 69, para. 2, of the Criminal Code).

206. It should be noted that article 18 of Decree 417/71 states that "if, during a custodial sentence, the young offender aged between sixteen and eighteen commits a criminal infraction, the Juvenile Court may be informed of this in order to review the sentence, if the character of the offender and the circumstances of the fact make this advisable".

Paragraph 5

207. The right of appeal as an important safeguard of the accused's defence is enshrined in the PC (art. 32) and is the subject of extensive regulations in the Criminal Procedure Code.

208. Except in cases provided for by law, the accused may lodge an appeal against a judicial decision in criminal proceedings finding against him (art. 647, paras. 2 and 3, of the Criminal Procedure Code, a contrario). The appeal should be lodged within five days from the publication of the relevant indictment or sentence (art. 651 of the Criminal Procedure Code). Appeals against the decisions of primary courts should be lodged with the Superior Court of Justice, which shall be informed of "the fact and the law. For appeals concerning final decisions of joint courts, the SCJ shall base its decision on documents, replies to inquiries and any other information contained in the records, on its own merits or in conjunction with the rules of common experience" (art. 14, para. 3 (a), of the LJOM and art. 55, paras. 1 and 2, of Decree-Law 17/92/M).

209. In the case of the criminal law, there are very few instances in which appeals against the decisions of the Superior Court of Justice can be lodged

with the Supreme Court of Justice in Portugal. These concern issues closely linked to sovereignty (for example, the judgement of high-ranking political officers).

210. The Superior Court of Justice is responsible for harmonizing jurisprudence, should it proffer a decision contrary to one it has already issued on the same subject of law (art. 668 of the Criminal Procedure Law and art. 14, para. 1 (d), of the LJOM).

Paragraph 6

211. Article 29, paragraph 6, of the PC recognizes the right, in the case of unjust convictions, to a review of the sentence and to compensation for damage caused. Should the time-limit for lodging an appeal have expired and the judgement therefore be perceived as unassailable, a review of the sentence may only be allowed in the circumstances stipulated in article 673 of the Criminal Procedure Code:

(a) If the facts on which the accused's sentence is based cannot be reconciled with those which appear in another sentence and if the conflict between them gives rise to serious doubts as to the justice of the conviction; or

(b) If a sentence given in court has been based on false comments, expert's evidence or documents which caused the final conviction; or

(c) If an acquittal or conviction which has acquired the force of res judicata is found to have been handed down as the result of bribery, corruption or embezzlement by the judges or members of the jury; or

(d) If new facts or evidence are discovered which per se or combined with other facts or evidence evaluated in the proceedings give rise to major misgivings as to the guilt of the accused; or

(e) When medical examinations required by law and other necessary steps carried out on the accused serving his sentence indicate that his mental condition may mean that he cannot be found responsible for the crime of which he stands accused.

212. The petition for a review of sentence may be submitted by the Public Prosecutor's Department, by the accused and, in the case of an acquittal, by the prosecution, regardless of whether the criminal action has passed the statute of limitations or the sentence has been handed down or served (arts. 674 and 675 of the Criminal Procedure Code). Authorization to review sentences falls to the Superior Court of Justice which is also responsible for determining the situation of the accused when he is serving a sentence or is being sentenced (art. 684 of the Criminal Procedure Code and art. 14, para. 3 (g), of the LJOM).

213. If the accused is acquitted in a review of sentence, he shall be given compensation for material and moral harm suffered, this to be paid by the

prosecution or, in the absence of this, the State (art. 690, para. 1, of the Criminal Procedure Code). If the accused has already paid a fine or the cost of proceedings, that sum shall be reimbursed.

Paragraph 7

214. Under the terms of article 29, paragraph 5 of the PC, no one may be tried more than once for the same offence. This principle - non bis in idem - is enshrined in articles 148 to 154 of the Criminal Procedure Code.

Article 15

215. Article 29 of the Portuguese Constitution (PC) states that no one shall be convicted under criminal law except by virtue of existing legislation making the act or omission punishable, and no one shall be subjected to a security measure involving deprivation of freedom for reasons that do not warrant such a measure under existing legislation, and also that no sentences or security measures involving deprivation of freedom shall be applied that are not expressly provided for in existing legislation (paras. 1 and 3 of the above-mentioned article). The principle of legality and non-retroactivity of criminal law are hereby established.

216. In the domain of criminal law, the principle of legality - nullum crimen sine lege, nulla poena sine lege - is also enshrined in articles 5 and 54 of the Criminal Code (annex 7), according to which no fact, either act or omission, may be deemed criminal unless provided for in existing legislation. This principle is also enshrined in article 15 of the same law with regard to the sources of criminal law, and in article 18 which excludes the admissibility of analogy or similarity (paridade and maioria de razão), to qualify any act as a crime, requiring that the circumstances of the criminal fact should be verified as demanded by law.

217. The principle of non-retroactivity of criminal law is regarded as so fundamental that it may not be suspended, even if a state of emergency is declared, as stated in article 19, paragraph 6, of the PC.

218. The principle of non-retroactivity of criminal law unless in the case of more favourable laws is provided for in article 29, paragraph 4, of the PC and article 6 of the Criminal Code. This last concept states the exceptions to the non-retroactive nature of criminal law.

(a) An infraction punishable by the law in force when it was committed is no longer punishable if a new law eliminates it from the list of infractions; if the case has already been tried, then the sentence is eradicated whether or not it has been served;

(b) If the sentence established by the law in force when the infraction was committed is different from those established in later laws, then the lighter sentence shall always be applied should the case still not have come to trial;

(c) The provisions of the law on the effects of the sentence shall be retroactive whenever this favours the criminal, even if he has been sentenced prior to implementation of the later law, unless the rights of third parties are affected.

Article 16

219. The provisions of the Portuguese Constitution (PC) enshrine the right to recognition as a person before the law. Article 26, paragraph 1, of the PC states that "everyone shall be recognized [as having] the right to his or her personal identity [and] civil capacity". In the same vein, article 30, paragraph 4, of the PC states that "no sentence shall involve, as a necessary effect, the loss of any civil (...) rights".

220. As has already been mentioned with regard to articles 4 and 15 of the Covenant, article 19, paragraph 6, of the PC states that under no circumstances may the declaration of a state of emergency affect the rights to life, personal dignity and identity and civil capacity.

221. At the infra-constitutional level, this right is also protected in articles 66 to 71 of the Civil Code (annex 4). With regard to the essential features of this regime, information has already been provided by Portugal in its second periodic report (CCPR/C/42/Add.1, paras. 588-589).

Article 17

222. The protection of privacy is enshrined in several constitutional provisions in force in Macau.

223. Article 26, paragraph 1, of the PC recognizes each citizen's right to a good name and reputation, and the protection of private and family life. Paragraph 2 requires legislators to set up effective safeguards against the abuse of use, or any use that is contrary to human dignity, of information concerning persons and families.

224. Article 34 of the PC establishes some of the most relevant constitutional principles regulating this issue. In accordance with this constitutional provision:

> "1. The individual's home and the privacy of his correspondence and other means of private communication shall be inviolable.
>
> "2. A citizen's home shall not be entered against his will except by order of the competent judicial authority and in the cases and according to the forms laid down by law.
>
> "3. No one shall enter the home of any person at night without his consent.
>
> "4. Any interference by public authorities with correspondence or telecommunications, apart from the cases laid down by law in connection with criminal procedure, shall be prohibited."

225. Article 32, paragraph 6, of the PC states that any evidence obtained through violation of private life in the home, correspondence or telecommunications shall be of no effect.

226. Article 35 of the PC regulates one of the most serious contemporary violations of private life. Concerning the use of databanks, paragraph 2 of this article states that "[a]ccess to personal data records or files shall be forbidden for purposes of getting information relating to third parties as well as for the interconnection of these files, save in exceptional cases as provided for in the law". Paragraph 3, states that "[d]ata-processing shall not be used in regard to information concerning a person's philosophical or political convictions, party or trade union affiliations, religious beliefs or private life, except in the case of non-identifiable data for statistical purposes". As a result, all citizens shall have the right of access to the data contained in automated data records and files concerning them as well as the right to be informed of the use for which they are intended; they shall be entitled to request that the contents thereof be corrected and brought up to date (art. 35, para. 1).

227. Article 36 of the PC lays the basis for, amongst other things, the right to found a family and to marry and the right of parents not to be arbitrarily separated from their children.

228. The protection of a good name and the inviolability of private life, correspondence and the home are also the subject of specific regulations in articles 70 to 72 and 75 to 80 of the Civil Code (annex 4). In accordance with article 80 of the Civil Code, no person should disclose the private life of others. In protecting the privacy of private and family life, the legal instrument of professional confidentiality and the duty of non-disclosure in relation to confidential letters and other personal papers (arts. 75-78 of the Civil Code) are particularly important. Even in the case of a non-confidential letter, the receiver may only use it in the manner in which the person who wrote it intended it to be used (art. 78 of the Civil Code).

229. In criminal law, Law 16/92/M of 28 September (annex 62) makes provision for the most serious violations of private communication and privacy to be treated as criminal acts. Under this Act, postal communications, telecommunications and other private means of communication may not be violated and are protected by the duty to observe confidentiality. The duty to observe confidentiality is the responsibility of all communications operators of public, private and concessionary telecommunications services and their employees. Interference by public authorities with postal or telecommunications is also prohibited, save for cases in which there is judicial authority allowing correspondence to be confiscated or conversations to be tapped, but this may occur only in the case of a crime punishable with a major sentence.

230. Violation of the privacy of correspondence or telecommunications is punishable under criminal law. The privacy of the private, family or sexual life of citizens is protected unless consent is given, and any violations are punishable under criminal law after a complaint has been filed. Precautionary measures are allowed to prevent or terminate any violation of private life.

231. Article 295 of the Criminal Code makes provision for and punishes the theft or violation of correspondence. With regard to correspondence and telecommunications by persons held in prison, the information pertaining to article 10 of the Covenant should be consulted. It should be noted, however, that prisoners and detainees are entitled to send and receive correspondence and those who are not able to contact their closest relatives directly shall be assisted in doing so.

232. With regard to the duty to observe professional secrecy, it should be noted that the Criminal Code (under arts. 289 and 290) makes provision for and punishes the removal of documents by lawyers and the Public Prosecutor's Department, and the violation of professional secrecy by any public employee. According to article 217 of the Criminal Procedure Code, leaders of any form of worship, lawyers, attorneys, notaries, doctors or midwives are not required to disclose or make statements concerning any information to which they have been made privy as a result of their professional duties, nor may public employees be penalized for not disclosing information which they could only reveal with authorization from their superiors.

233. Within the framework of the High Commission against Corruption and Administrative Illegality, created by Law 11/90/M of 10 September (annex 34), the High Commissioner, his advisers, support staff and assistants are bound by the duty to observe confidentiality concerning information to which they have been made privy in the course of, or as a result of, their duties.

234. Decree-Law 32/93/M of 5 July (annex 69) approving the legal framework of the financial system, establishes the duty of professional secrecy for members of the boards of credit institutions, their employees, auditors, expert advisers, agents and other persons providing them with services. These persons are bound to keep secret the names and other relevant information pertaining to customers, their financial business and other banking operations. They may only be released from the duty to observe professional secrecy by the client himself or by judicial mandate under the terms of criminal law or the law of criminal procedure. Persons bound to observe professional secrecy are liable, in general terms, to disciplinary, civil and criminal measures.

235. Within the scope of illegal trafficking and use of narcotics, article 34 of Decree-Law 5/91/M of 28 January (annex 112) states that information provided or authorized by judicial authorities may be requested concerning property, deposits or any other assets belonging to individuals under strong suspicion or accused of being engaged in the illegal trafficking of narcotics.

236. With regard to the protection of citizens' honour and good reputation, articles 407 to 420 of the Criminal Code make provision for and punish crimes against honour, and of libel, calumny and slander.

237. No proof of the truth of the claims referred to in the preceding paragraph shall be accepted, save in cases involving public employees in circumstances related to their jobs or involving a crime for which an individual has already been sentenced, even if the sentence has not been served, or a case still pending in court.

238. With regard to the media, the legal regime established by the Press Law (Law 7/90/M of 6 August (annex 13)) and the Regime of Radio Broadcasting Activities (Law 8/89/M of 4 September (annex 28)) shall be examined in the information pertaining to article 19 of the Covenant.

239. Police records are regulated by Decree-Law 43,089 of 11 July 1960, published in the Official Gazette of Macau No. 33 of 13 August 1960 (annex 113), Administrative Regulation 6,713 of 4 March 1961, published in the Official Gazette of Macau No. 9 of 4 March 1961 (annex 114), and Decree-Law 251/71 of 11 June, published in the Official Gazette of Macau No. 46 of 13 November 1971 (annex 115). According to this legislation the competent official authorities may only request police record certificates for academic or statistical purposes. Otherwise, a police record certificate may only be obtained by the interested party himself, his parents, the spouse, the guardians of a person absent or unable to request it on his own behalf, any person presenting a request from the absent party addressed to him and by solicitors and lawyers representing their clients. Police record certificates issued for private purposes shall not show any sentences handed down for crimes subject to amnesty, suspended sentences, sentences whose transcription has been forbidden by court and sentences prior to rehabilitation.

240. The special records for minors are secret and certificates may only be issued at the request of the Young Offenders Institution or the competent judicial authority.

241. The principle of inviolability of the home is established in article 77 of the Criminal Procedure Code.

242. Once the conditions set out in article 34 of the PC have been observed for the arrest of an accused person at night from an inhabited house, the consent of those living there must be sought; should the arrest take place during daytime and not under circumstances of flagrante delicto, the arrest warrant must expressly authorize it according to articles 300 to 302 of the Criminal Procedure Code. In the case of the arrest of culprits found in flagrante delicto engaged in a crime punishable by a prison sentence, entry to the house where the crime is being committed is allowed under the terms of article 289 of the Criminal Procedure Code, so long as the conditions stated in article 34 of the PC are respected.

243. Searches are regulated by articles 203 to 213 of the Criminal Procedure Code. Searches may only be carried out on judicial authority. Between sunset and sunrise, searches may not be carried out in inhabited houses unless the person concerned gives his consent. Article 194 of the Criminal Code prohibits the entry of any public employee into a third party's home without permission.

244. Under the terms of the Lawyers' Statute, approved by Decree-Law 31/91/M of 6 May, amended by Decree-Law 26/92/M of 4 May (annex 42) searches and other similar measures in the office of a lawyer or any other place where he keeps files may only be permitted on the authority of a judge who should request the lawyer to be present during the search along with a member of the Lawyers'

Association of Macau. Correspondence dealing with professional matters may not be confiscated except in cases in which it is connected with the crime of which the lawyer stands accused.

Article 18

245. Article 41 of the Portuguese Constitution (PC) states that freedom of conscience, religion and worship is inviolable. This principle, the corollary of the principle of equality, is stated in such express terms, particularly as far as the first two rights are concerned, that the Constitution does not allow them to be suspended, even in a state of emergency (art. 19, para. 6). A direct consequence of these principles is found in the fact that no one shall be persecuted, deprived of rights or exempted from civil obligations or duties because of his convictions or religious practices, nor shall anyone be questioned by any authority or investigated in this domain other than for statistical purposes (art. 41, paras 2 and 3; art. 35, para 3, of the PC).

246. The principle of the separation of Church and State has been enshrined in the law since 1911. This principle is embodied in the PC and has as its corollary the nondenominational nature of the State and the freedom of organization and practice of religious functions by churches and religious communities. Under the terms of this arrangement, religious influence in the organization of the public authorities is forbidden, and consequently public education must be nondenominational, political parties may not adopt religious symbols and trade unions are not allowed to have religious connections (art. 43, paras. 2 and 3; art. 51, para. 3; art. 55, para. 4, of the PC).

247. The freedom of organizations and independence of the churches is only limited by those restrictions placed on the freedom of association.

248. The importance of freedom of conscience, religion and worship in the various sectors of society is reflected in its extensive protection in domestic law.

249. In view of its non-sovereign status, Macau has historically followed a path similar to that of Portugal, although Catholicism has only been one - and not the greatest - of various religions practised by the multicultural population. In Macau, as in Portugal, Catholicism enjoyed a privileged position until the establishment of the Portuguese Republic in 1910 when it ceased to be the official religion as a consequence of the application of the principle of the separation of State and Church. On 7 May 1940, the situation changed with the signing of a concordat by the Portuguese State and the Holy See which was extended to Macau by publication in the Official Gazette of Macau No. 37, of 14 September 1940 (annex 116).

250. Similarly, the Law concerning the Bases of Religious Freedom, Law 4/71 of 21 August 1971, published in the Official Gazette of Macau No. 5 of 2 February 1974 (annex 117), emphasizes the separation of the State and religious denominations and grants the latter equal treatment, except as regards the differences stemming from their level of representation in the population. The Act specifies that all persons are entitled to have or not have a religion, change denomination or abandon their previous denomination, act or not act in accordance with what is prescribed by their denomination,

express and spread their convictions, and perform acts of worship in accordance with their religion (Base III). The right of assembly for public worship is given special protection in Base V.

251. Criminal law protects the principle of freedom of religion and worship, punishing those who disturb acts of worship or abuse a minister engaged in worship.

252. The Catholic Church has a special status in Macau as a result of its past relations with Portugal as reflected in the above-mentioned concordat.

253. The missionaries of the Padoado do Oriente are subject to the legal regime laid out in the Missionaries' Statute approved by Decree-Law 31,207 of 4 April 1941, published in the Official Gazette of Macau No. 26 of 28 June 1952 (annex 118). This document stipulates that missionary corporations and institutions are not State organizations or departments and that missionary workers and helpers are not employees of the State. Nevertheless, the diocese of Macau maintains the right to a pension of missionary staff.

254. The guarantee of freedom of conscience and religion is also reflected in the public holidays in effect in Macau, which mirror the high degree of social and cultural pluralism in the Territory's society.

255. Decree-Law 437/75 of 16 August, published in the Official Gazette of Macau No. 47 of 19 November 1977 (annex 93), regulating the regime for extraditions, stipulates that requests for extradition shall not be granted whenever there is good reason to believe that criminal prosecution shall ensue as a result of religious belief.

256. Prisoners are allowed to practise their faith and receive visits from religious workers of their respective faith. To facilitate this the prison offers special facilities for acts of worship.

257. Law 11/91/M of 29 August (annex 45) establishing the general framework for Macau's education system enshrines the right of all residents to education regardless of race, belief and political or ideological convictions. Consequently, the Administration shall not arrogate to itself the right to plan education in accordance with any philosophical, aesthetic, political, ideological or religious guidelines (arts. 2 and 3 of this Law and art. 43, para. 2, of the PC). Matriculation in schools maintained by religious organizations implies acceptance of education in the religion and morals of that religion (Base VII of Law 4/71).

258. The PC also protects freedom of intellectual, artistic and scientific creation (art. 42).

259. The Copyright Code approved by Decree-Law 46,980 of 24 April 1966, published in the Official Gazette of Macau No. 2 of 8 January 1972 (annex 119), protects the intellectual property of any creator. The author's right to dispose of, use or profit from his work is recognized regardless of whether it has been registered or undergone any other formality (arts. 1, 4 and 8). The author of intellectual property shall enjoy the right to assert

his role as creator of the work and safeguard its integrity for the duration of his life (art. 55). Law 4/85/M of 25 November (annex 120) follows the same pattern in offering protection against illegal copying of records and videos.

Article 19

260. Freedom of expression and information is offered special protection in Macau's legal framework thanks to the following provisions of the Portuguese Constitution (PC): article 37 ("Freedom of expression and information"), article 38 ("Freedom of the press and mass media") and article 40 ("Right to broadcasting time, to reply and to political argument").

261. Article 37 of the PC states that:

> "1. Everyone shall have the right to express and make known his or her thoughts freely by words, images or any other means, and also the right to inform, obtain information and be informed without hindrance or discrimination.
>
> "2. The exercise of these rights shall not be prevented or restricted by any type or form of censorship.
>
> "3. Offences committed in the exercise of these rights shall be punishable under the general principles of criminal law, the courts of law having jurisdiction to try them.
>
> "4. The right of reply and rectification and the right to compensation for losses suffered shall be equally and effectively secured to all natural and artificial persons."

262. Moving from general to specific situations, the PC deals first of all with the freedoms of expression and information (art. 37) and then how these are used in regulating the press and other forms of the media (art. 38). It concludes by discussing the right to broadcasting time, which constitutes a special safeguard of those freedoms (art. 40).

263. Article 38, paragraph 1, of the PC enshrines the freedom of the press. The freedom of the press implies:

(a) Freedom of expression and creation for journalists and literary contributors;

(b) The journalists' right to access to sources of information and to the protection of their professional independence and confidentiality in accordance with the law;

(c) The right to found newspapers and any other publications without prior administrative authority, security or qualification (art. 38, para. 2).

264. The State guarantees the freedom and independence of the organs of the mass media from political and economic interests, invoking the principle of exclusive object for companies which own general information media, treating them and supporting them in a non-discriminatory manner and preventing their

concentration through multiple or linked holdings (art. 38, para. 4, of the PC). The structure and operation of the mass media should safeguard their independence from the Administration, and ensure that various currents of opinion can be voiced (art. 38, para. 6).

265. With regard to the right to broadcasting time and to the right of reply, article 40, paragraph 1, of the Portuguese Constitution guarantees broadcasting time on radio and television to political parties and trade unions, professional organizations and organizations representing economic activities, according to their representativeness and to objective criteria defined by law.

266. As will be discussed below in greater detail in the information pertaining to article 25 of the Covenant, candidates in elections are entitled to equal, regular broadcasting times on television and radio stations (art. 40, para. 3, of the PC).

267. In the same vein as the provisions already discussed, Law 8/89/M of 4 September (annex 28) and Law 7/90/M of 6 August (annex 13) were published, regulating the regime for radio and television broadcasting and press activities respectively. Under the terms of article 3, paragraph 1 (b), of Law 8/89/M, the aim of broadcasting is "to contribute to informing the citizen, guaranteeing him the right to inform and to be informed without hindrance or discrimination". In order to achieve this, broadcasting activities must safeguard their immunity, pluralism, rigour and objective reporting and their independence in the face of political powers (art. 3, para. 2 (a)).

268. Under article 47, paragraph 1, "the right to expression of thought and the right to information are to be exercised without any censorship, hindrance or discrimination, respecting individual freedoms and the rights of citizens to moral integrity, good name and reputation". Radio and television broadcasting is carried out, according to article 47, paragraph 2, "in an independent, autonomous manner as far as programming is concerned, and no public or private body may prevent or enforce the broadcasting of programmes". This is ensured by the Broadcasting Council, a body which, under the terms of article 4, is responsible for:

(a) Guaranteeing the independence of concessionaires and operators of broadcasting services against political and economic interests;

(b) Safeguarding pluralism and freedom of expression and thought;

(c) Guaranteeing the rigour and objectivity of reporting;

(d) Ensuring the quality of programming;

(e) Protecting the rights and complying with the obligations provided for in this law.

269. Television broadcasting may be permitted to any collective person established as a company based in Macau whose object is to engage in this activity and can offer guarantees of responsibility, technical qualifications

and financial capacity. Radio broadcasting is subject to the regime governing the licensing of any collective person based in Macau which can offer guarantees of responsibility, technical qualifications and financial capacity. The granting of concessions and the awarding of licences is usually preceded by public tender (art. 13, para. 1; art. 33, para. 1, of Law 8/89/M). The right to broadcasting time is regulated in articles 59 and 60 of the same Law.

270. In accordance with these provisions, candidates, political parties, coalitions and electoral groups are entitled to exercise this right during elections for the sovereign bodies of the Portuguese Republic and the civic associations and candidacy committees which run for election to the Legislative Assembly, the Consultative Council and the Municipal Assemblies.

271. Article 61, entitled "The right of reply", states, in paragraph 1, that "any single or collective person who believes himself to have been injured by a broadcast representing or containing material which is directly offensive or which makes reference to an untrue or mistaken fact and which could call into question his good name or reputation, may exercise the right of reply". The right may be exercised either in or out of court, and the law sets extremely short deadlines so that the broadcast of the reply can occur during working hours. The reply is free and, wherever possible, included in the programme in which the corresponding fact was broadcast.

272. Under the terms of article 4, paragraph 1, of Law 7/90/M "freedom of expression of thought by the press is exercised free from any kind of censorship, authorization, deposit, security or other qualification". In turn, article 3, entitled "Right to Information", states that:

> "1. The right to information covers the right to inform, to obtain information and to be informed.
>
> "2. The right to information is the manifestation of the freedom of expression of thought and covers:
>
> "(a) freedom of access to the sources of information;
>
> "(b) guarantee of professional confidentiality;
>
> "(c) guarantee of journalists' independence;
>
> "(d) freedom of publication and broadcast;
>
> "(e) freedom of the press."

273. The provisions of this article are developed in articles 5 to 9 which carefully define the aim and extent of each of the freedoms and safeguards mentioned.

274. Similarly, under article 25, the Press Council is responsible for guaranteeing:

(a) The independence of the press against political and economic interests;

(b) Pluralism and freedom of expression or thought by the press;

(c) Protection of the public's right to information.

275. As to the ownership of newspapers, under the terms of article 9, "newspaper, editorial and news companies may be established freely" and these should be "effectively managed in Macau and may only belong to singular or collective persons resident or based in Macau".

276. The right to reply, disclaimer or rectification is provided for legally in articles 19 et seq. under a regime which is the same as the law governing radio and television broadcasting.

277. The right to clarification, enshrined in article 24 of the above-mentioned Law, is a new introduction intended to avoid criminal prosecution arising from abuses of press freedom and has been designed for Macau's situation where consensus is usually sought in preference to court action. Consequently, in accordance with paragraph 1 of this article, "when a periodical publication contains equivocal references, allusions or phrases which could imply libel or slander of another person, any person who believes himself to be the target of such references, allusions or phrases may request the court to notify the editor and author if known to issue in writing an unequivocal statement indicating whether or not these references, allusion or phrases concern him or not and to clarify them". Later, the statement and clarification should be printed in the same part of the publication and the judge shall decide whether or not the outcome has been satisfactory. Should it not be deemed satisfactory, the judge may order publication and impose a fine.

278. At present there are in Macau:

(a) Two broadcasting operators: TDM - Teledifusão de Macau, S.A.R.L., which holds a concession for two television channels (one broadcasting in Portuguese and the other in Chinese) and two radio channels (one broadcasting in Portuguese and the other in Chinese), and Rádio Vilaverde, S.A.R.L., which holds a concession contract for one radio channel broadcasting in Chinese;

(b) Twenty-six newspapers, of which 10 are published in Portuguese - O Clarim, Tribuna de Macau, O Comércio de Macau, Ponto Final, Amagao (all weeklies), Gazeta Macaense, Jornal de Macau, Macau Hoje, Jornal Novo, O Futuro de Macau (dailies) - and 16 in Chinese - Sporting Weekly, Si Si, Sino-Macanese Courier, Hou Keng, Gazette, Son Pou, The Pulse of Macau, Hou Hoi, Macau Leisure (all weeklies) and Ou Mun Iat Pou, Va Kio, Si Man, Tai Chung, Seng Pou, Cheng Pou and Macau Today (dailies);

(c) Twenty-six correspondents from Portuguese, Chinese and Hong Kong newspapers;

(d) Some 12 magazines, of which three are published in Portuguese - Administração, Revista de Cultura and Macau - 2 are bilingual - Face (Portuguese and Chinese) and Macau Image (Portuguese and English) - 1 in English - Macau Travel Talk - and several others in Chinese;

(e) Four news agencies, of which one is Portuguese - Lusa - one Chinese - Xenhua/New China - one French - France Presse - and one American - United Press International.

Article 20

279. The principles enshrined in the Portuguese Constitution (PC) (in arts. 7 and 46) clearly exclude any incitement to war or violence. In particular, article 46, paragraph 1, of the PC prohibits "the formation of associations intended to promote violence or whose objectives are contrary to the criminal law".

280. Article 3, paragraph 2, of Decree-Law 3/76/M of 23 March, republished and duly rectified on 17 April (annex 121), reiterates the prohibition of "associations whose aim is to attack democratic institutions or which incite hatred or violence".

281. Article 46, paragraph 4, of the PC also prohibits "armed, military-type, militarized or paramilitary associations and organizations which adopt Fascist ideology".

282. The Criminal Code makes provision for this in articles 148, 179 and 180 in which the practice of acts which incite to hatred or violence is punishable under criminal law. Article 148 punishes any person exposing citizens to reprisals by a foreign power with a prison sentence of between two and eight years if the reprisals are carried out. Article 179 punishes anyone who organizes or participates in acts of sedition with prison sentences of between three months and two years or between two and eight years depending on the severity of the crime. For the purposes of this provision, sedition is regarded as grouping together in uprisings, riots or tumults, and displaying unruly behaviour, using violence, threats or insults, or attempting to invade any public building or the home of a public employee:

(a) To prevent a law, regulation, decree, or legitimate order from the authorities from being carried out;

(b) To constrain, prevent or disturb any entity with public authority, a magistrate, an agent of the authorities or a public employee from carrying out their duties;

(c) To avoid complying with an obligation; or

(d) To carry out an act of violence, revenge, or contempt against a public employee or a member of the legislative power.

Article 180 of the Criminal Code punishes organization of or participation in the crime of rioting, this being the grouping together in any public place to carry out an act of hatred, revenge or contempt against any citizen, or to prevent or disturb the free use or enjoyment of individual rights, or to commit a crime subject to a maximum prison sentence of six months.

283. The Electoral Act for the Legislative Assembly of Macau, approved by Law 4/91/M of 1 April (annex 38) states in article 64, paragraph 3, that

"candidates [for the Legislative Assembly] and their supporters are responsible for damage caused directly by actions which are the result of incitement to hatred or violence in the course of their activities during the election campaign".

284. It is important to point out that Macau has long been a territory where people of diverse religious beliefs, races, nationalities and languages have lived together in harmony and that no discrimination whatsoever is allowed on the basis of ancestry, sex, race, language, country of birth, political or religious convictions, educational level, economic status or social standing.

Article 21

285. Under Article 45, paragraph 1, of the Portuguese Constitution (PC), "citizens shall have the right to meet peacefully and without arms, even in public places, without requiring any authorization." Paragraph 2 of the same article states that "the right of all citizens to demonstrate shall be recognized."

286. Article 1 of Law 2/93/M of 17 May (annex 67), regulating the right of peaceful meetings and demonstrations in the Territory of Macau, repeats these principles by providing that "the residents of Macau shall have the right to meet peacefully and without arms, in public places, places open to the public or in private, without requiring any authorization" and also that "residents of Macau are entitled to demonstrate". Meetings and demonstrations "with aims contrary to the law" shall not be permitted, although the right to criticize is safeguarded (art. 2 of Law 2/93/M). The exercise of these rights "may only be restricted, limited or placed under conditions in the cases provided for by the law" (art. 1, para. 3).

287. In the exercise of these rights, the most salient feature and true touchstone of the rationale behind the regulations lies in the establishment of a legal regime which dispenses with any need for prior authorization, stating that it is enough merely to indicate the intention to meet or demonstrate in advance. The law states that people and bodies intending to hold meetings or demonstrations along public thoroughfares, in public places or places open to the public should inform the president of the respective municipal council in writing at least three days and not more than two weeks beforehand (art. 5, para. 1, of Law 2/93/M). When meetings or demonstrations are motivated by political or labour reasons, the minimum prior notice required can be reduced to two working days (art. 5, para. 2, of Law 2/93/M).

288. An appeal against a decision by the authorities not to allow or to restrict any meeting or demonstration may be lodged with the Superior Court of Justice (arts. 6 and 12, para. 1, of Law 2/93/M). This appeal is dealt with under special terms owing to its urgent nature (art. 12, paras. 2 and 3, of Law 2/93/M).

289. Meetings or demonstrations may not be held by illegally occupying public places, places open to the public or private places (art. 3 of Law 2/93/M).

290. The municipal councils are obliged by law to publish in the Official Gazette of Macau a list of public places and places open to the public

belonging to the Administration and other public entities which may be used for meetings and demonstrations (art. 16 of Law 2/93/M). Consequently, the Leal Senado Notice dated 17 November 1993 and the Islands Municipal Council Notice dated 23 December 1993 were published in the Official Gazette of Macau, both of these indicating those places which may be used for meetings or demonstrations (annexes 76 and 77).

291. There are time restrictions, which mean that a meeting or demonstration may not be held between 12.30 a.m. and 7.30 a.m., save when it occurs in a closed space, in places of public entertainment, uninhabited buildings or, if there are persons living in a building, they are the organizers or have given their written consent (art. 4 of Decree-Law 2/93/M).

292. The Commander of the Public Security Police may also require, for duly justified reasons of public security, that meetings or demonstrations keep a distance of at least 30 metres from the seats of the Territory's government, buildings essential to its operation, the headquarters of municipalities, court buildings and police buildings, prison facilities and the headquarters of diplomatic missions or consuls, without prejudice to the public places and places open to the public which belong to the Administration and other public entities which are specially reserved for meetings and demonstrations (art. 8, paras. 3 and 4, of Law 2/93/M).

293. The Law states that police authorities may only interrupt meetings or demonstrations when the organizers have been informed through the official channels that they have not been authorized because their aim is contrary to the law or when they fail to keep within the law and cause a serious disturbance to public security or the free enjoyment of individual rights (art. 11, para. 1).

294. Counter-demonstrations are not prohibited, but police authorities should take the necessary precautions to permit meetings and demonstrations to proceed without interference from counter-demonstrations which could disturb the free exercise of participants' rights; policemen may be posted in appropriate places in order to safeguard demonstrators' safety (art. 10 of Law 2/93/M). Counter-demonstrators who interfere with demonstrations, preventing or attempting to prevent them from proceeding freely, shall be subject to the sanctions provided for the crime of physical coercion (art. 14, para. 3, of Law 2/93/M; art. 329 of the Criminal Code).

295. No agent of the authorities may be present on duty in a meeting held in a closed space unless their presence has been requested by the organizers (art. 9, para. 1, of Law 2/93/M).

296. Persons carrying arms in meetings or demonstrations, and persons holding meetings or demonstrations which are against Law 2/93/M shall be subject to punishment for the crime of qualified disobedience, regardless of other sanctions which their actions may give rise to (art. 13, para.1; art. 14, para. 1, of this Law).

297. Organizers of meetings or demonstrations who have prior knowledge of the presence of arms and fail to take measures to disarm those carrying them shall be subject to punishment under the crime of qualified disobedience (art. 13, para. 2, of Law 2/93/M).

298. Any authority which oversteps the law in preventing or attempting to prevent the free exercise of the right to meet or demonstrate shall be subject to the punishment provided in article 291 of the Criminal Code ("Abuse of authority") and shall be subject to disciplinary proceedings (art. 14, para. 2, of Law 2/93/M).

Article 22

299. The basic principles governing the right to free association are contained in article 46 of the Portuguese Constitution (PC) which protects:

(a) The right of association. This is the right of individual citizens to create associations with no obstacles or impositions from the State, and the right to join already existing organizations;

(b) The freedom of association. This is the right of associations themselves to organize and carry on their activities freely:

(c) The freedom of non-association. This is the right of any citizen to not belong to an organization, and the right to leave any organization.

300. Paragraph 2 of this clause in the PC should also be noted, in that it states that "[a]ssociations may pursue their objectives freely without interference by any public authority. They shall not be dissolved by the State and their activities shall not be suspended except by judicial decision in the cases provided by law".

301. In Macau, freedom of association is regulated by Decree-Law 3/76/M of 23 March, republished with rectifications on 17 April (annex 121). All adult citizens, in full enjoyment of their civil rights, are guaranteed the free exercise of the general right of association for aims which do not contravene the law or public morality without any prior authorization (art. 1, para. 1, of Decree-Law 3/76/M, in the same vein as art. 46, para. 1, of the PC). Accordingly, nobody may be forced or coerced in any way to join an association of any kind (art. 2, para. 1, of Decree-Law 3/76/M, in the same vein as art. 46, para. 3, of the PC). Anybody, whether a public or administrative authority, who forces or coerces another person to register in an association shall be subject to the sanction provided for the crime of illegal detention, punished under the terms of article 291 of the Criminal Code (art. 2, para. 2, of Decree-Law 3/76/M).

302. As has already been mentioned with regard to article 20 of the Covenant, associations advocating the removal of democratic institutions or defending hatred and violence are not permitted (art. 3, para. 2, of Decree-Law 3/76/M).

303. Organized crime, which in the region of Macau takes the form of secret societies commonly described as sects or triads, is not permitted and is subject to a specific legal regime (Law 1/78/M of 4 February (annex 122)).

304. The general regime for the organization and operation of associations is governed by the norms contained in article 157 et seq of the Civil Code and by the provisions of Decree-Law 3/76/M.

305. The regime concerning civic associations should also be noted, as these are one of the most common manifestations of freedom of association amongst the citizens of Macau. "Civic associations shall be understood to be permanent organizations of citizens which aim at the promotion of the exercise of political rights by citizens, by:

"(a) participating in elections;

"(b) defining governmental and administrative programmes;

"(c) participating in the activities of government bodies and local authorities;

"(d) criticizing the activities of the public administration;

"(e) promoting education in and the clarification of civic rights of citizens (art. 10 of Decree-Law 3/76/M)."

306. Civic associations have the right to present candidates, submitting lists of candidates for direct or indirect election as members of the Legislative Assembly and for the Municipal Assemblies (art. 20, paras. 1 and 2; art. 36 of Law 4/91/M of 1 April (annex 38); arts. 16 and 32 of Law 25/88/M of 3 October (annex 22)). These associations do not monopolize, however, the right to submit candidates for direct and indirect elections as members of the Legislative Assembly; candidacy committees may also propose candidates for direct or indirect elections to the Legislative Assembly and the Municipal Assemblies (art. 20, paras. 1 and 2, and art. 36 of Law 4/91/M of 1 April; arts. 16 and 32 of Law 25/88/M of 3 October.

307. As can be seen, civic associations constitute a particular kind of political association, of great relevance to the degree of public participation in the choice of members of the Legislative Assembly and the shaping of political attitudes in the government of the Territory.

308. Macau's law allows the creation of political parties.

309. In order for a civic association to be formed the law requires that the application requesting the relevant registration be signed by 200 adult citizens in full enjoyment of their civic and political rights (art. 11, para. 1 (c), of Decree-Law 3/76/M).

310. The right to join a trade union is included in the right of free association enshrined in article 46 of the PC, and is also expressly guaranteed in its article 55 (trade union freedom); the rights of trade unions and collective right to bargaining are contained in article 56. There is no specific legislation in Macau concerning trade union activities. Nevertheless, there are many recognized workers' associations in Macau which are similar to trade unions, under the terms of Decree-Law 3/76/M. It should also be noted that ILO Convention No. 98 on the rights to organize and

collective bargaining issued in 1949 was approved by Decree-Law 45,758 of 12 June 1964 and is published in the Official Gazette of Macau No. 28 of 11 July 1964 (annex 123).

311. Of equal importance is the Standing Committee on Coordinating Social Affairs, created by Decree-Law 31/87/M of 1 June (annex 15), which operates in conjunction with the Governor. The Committee is consultative in nature and consists of representatives of the Administration, employers' associations and workers' associations. The Committee should be consulted on draft legislation relating to socio-economic issues; it should issue an opinion either on request or on its own initiative on policies for socio-economic reorganization and development; and should suggest solutions conducive to the normal running of the Territory's economy, taking into account socio-labour considerations and the population's standard of living.

312. Decree-Law 13/94/M of 21 February (annex 83) created the Economic Council which functions as a consultative body of the Governor in the field of drafting the development strategies and economic policies of the Territory. The Council has the power:

(a) To issue an opinion on the major policies for the economic development of the Territory in the field of industry, commerce and promoting investment;

(b) To issue an opinion on strategies for socio-economic reorganization and development;

(c) To oversee and evaluate on a regular basis the Territory's economic situation;

(d) To oversee the negotiation of bilateral and multilateral economic agreements to which Macau is party;

(e) To promote discussions between the various interests in the economic sector.

313. The Economic Council consists of representatives of the Administration and organizations representing economic interests to be appointed by the relevant associations, and also persons of recognized merit and standing in the economic, business and scientific sectors.

Article 23

314. The rights of the family and the inherent right to a family life are fully enshrined in Macau's legislation which offers essentially the same principles and practically the same provisions, in terms of rights, freedoms and safeguards, as are in force in Portugal. These have already been discussed in detail in Portugal's initial report (CCPR/C/6/Add.6, para. 23) and in the second periodic report (CCPR/C/42/Add.1, paras. 740-767).

315. Persons ordinarily resident in Macau are governed, at the level of ordinary legislation, by the same norms of family law as those in force in Portugal. These are contained in "Book IV - Family Law" of the Civil Code

(annex 4) according to its presentation in Decree-Law 496/77 of 25 November, published in the Official Gazette of Macau No. 14 of 13 April 1978. Consequently, the regime is identical in terms of the rights and duties of spouses.

Paragraph 1

316. Article 36 of the Portuguese Constitution (PC) recognizes and safeguards the rights relating to the family, marriage and recognition of children.

Paragraph 2

317. Article 36, paragraph 1, of the PC states that "everyone shall have the right to found a family and marry on terms of complete equality". From this norm, which enshrines two fundamental yet distinct rights, it can be seen that the right to establish a family is broader than the right to enter into matrimony.

318. Two corollaries of the principle of equality enshrined in article 36, paragraph 1, of the PC are:

(a) Equal rights and duties of spouses as regards civil and political capacity and the maintenance and upbringing of the children (art. 36, para. 3, of the PC); and

(b) Prohibition of discrimination against children born out of wedlock (art. 36, para. 4, of the PC).

319. Parents have the right and the duty to bring up and maintain their children and may not be separated from them unless they fail to perform their duties towards them. Such separation must always be the result of a judicial decision (art. 36, paras. 5 and 6, of the PC).

Paragraph 3

320. As far as regards consent to marry, the PC leaves the regulating of the requirements for marriage to ordinary law, in this case the Civil Code (art. 36, para. 2, of the PC). The Civil Code presumes consent between the two parties contracting marriage (art. 1,634) on the basis of iuris tantum. Consent cannot be subject to any conditions or prescriptive time-limits and must be personal, actual, complete and free (art. 1,617; art. 1,618, para. 2; art. 1,619 of the Civil Code).

321. Article 124, paragraph 1(c), of the Civil Registration Code approved by Decree-Law 14/87/M of 16 March (annex 124) states that in a marriage ceremony, "both the groom and the bride must declare clearly and freely their desire to marry each other".

322. In Article 1,635 of the Civil Code, the requirements for an annulment on the basis of absence of consent are stated as follows:

> "(a) when, at the moment of celebrating the marriage, one of the parties was not aware of his or her acts, due to accidental or other causes;
>
> "(b) when one of the parties was mistaken as to the physical identity of the other party;
>
> "(c) when the declaration of desire has been extorted by physical coercion;
>
> "(d) when the marriage has been simulated."

323. The request for the annulment of a marriage is examined in court in an action filed by the party whose desire was absent; the same party's parents, children, inheritors or adoptive children may file the action should the party die before the matter is settled.

Paragraph 4

324. The equality of the spouses is enshrined in the PC and several provisions of civil law. Spouses have equal rights and duties concerning their civil and political capacity and maintenance of the children (art. 36, para. 3, of the PC) which follows directly from article 13 of the PC. For the duration of the marriage, the principle of equality of rights and duties is contained in several provisions.

325. Marriage is based on the equality of rights and duties of the spouses (art. 1,671, para. 1 of the Civil Code). The management of the family is the responsibility of both spouses who should agree as to the way in which their shared life is lived, taking into account the well-being of the family and each other's interests (art. 1,671, para. 2, of the Civil Code). Spouses are reciprocally bound by the duties of respect, fidelity, cohabitation, cooperation and mutual assistance (art. 1,672 of the Civil Code). Both spouses are bound by the duty to contribute to the expenses of family life, in accordance with each party's potential (art. 1,676, para. 1, of the Civil Code). The family residence is to be chosen by both spouses by common agreement (art. 1,673, para. 1, of the Civil Code). Each spouse may engage in a profession or activity without the consent of the other (art. 1,677-D of the Civil Code). Each spouse manages his or her own property, the income from employment, and the shared property brought into the marriage or acquired freely after the marriage (art. 1,678, para. 1 (a) and (c), of the Civil Code). Each spouse may take out credit without the consent of the other (art. 1,690, para. 1, of the Civil Code). Each spouse is entitled to use the surnames of the other (art. 1,677, para. 1, of the Civil Code).

326. The equality of rights and duties of the spouses is also protected by law in certain provisions of the Civil Code, should the marriage be dissolved by divorce or legal separation. Either spouse may request a straightforward legal separation of property when there is a danger of losing his or her part due to bad management by the other spouse (art. 1,767 of the Civil Code).

Divorce may be requested in court by both spouses by mutual agreement, or by one of them filing divorce proceedings against the other in the case of a contested divorce (art. 1,773 of the Civil Code). Either spouse may request divorce should the other fail to fulfil his or her marital duties whenever this failure is so serious or repeated as to place in jeopardy the continuation of a life together (art. 1,779, para. 1, of the Civil Code). Also divorce may be requested as a result of a rupture in marital life due to a de facto separation of six consecutive years, the absence of the spouse with no news of him or her for at least four years or when the mental faculties of a spouse undergo a radical change lasting for more than six years which, by its severe nature, places the marital life in jeopardy (art. 1,781 of the Civil Code).

327. The court may lease the family home to either of the spouses regardless of whether or not it is shared property or the personal property of one of them, taking into account the requirements of each spouse and the interests of the children of the marriage (art. 1,793, para. 1, of the Civil Code).

328. The law contains a series of measures intended to provide children with due protection in the case of marital breakdown. Article 1,905 of the Civil Code states:

> "1. In the case of divorce, legal separation of persons and property, declaration of annulment or cancellation of the marriage, the future of the child, his upkeep and the way in which this is to be provided shall be regulated by agreement of the parents subject to court approval; approval shall be denied should the agreement not meet the requirements of the minor.
>
> "2. Should there be no agreement, the court shall decide in accordance with the interests of the minor, and the minor may be entrusted to either of the parents or, in the case of any of the situations provided for in article 1,918 [danger to arsenal security, health, moral upbringing and education of the child] to a third party or educational or welfare establishment".

329. In the cases referred to in the above-mentioned article, parental control is exercised by the parent who has custody while the parent who has no parental control shall have the power to check the education and living conditions of the child (art. 1,906, paras. 1 and 3, of the Civil Code); should the situation mentioned in article 1,905 paragraph 2, of the Civil Code arise, the bodies referred to therein shall be responsible for exercising those duties and responsibilities of the parents required to adequately fulfil their duties (art. 1,907, para. 1, of the Civil Code).

330. In addition to this, mention should be made of other legislation which contributes to shaping the legal framework governing the family and the protection it is lent.

331. Protection of motherhood and fatherhood. Macau's legal framework protects motherhood and fatherhood, as a direct result of the constitutional protection enshrined in article 36, paragraphs 5 and 6, of the PC, mentioned above.

332. Protection of health. Article 3, paragraph 2 (c), and article 8, paragraph 1 (a), of Decree-Law 24/86/M of 15 March (annex 106) guarantee women the right to free medical treatment during and after pregnancy.

333. Protection of employment. Decree-Law 24/89/M of 3 April, which establishes the legal framework for labour relations in Macau (annex 25), states in article 37, paragraph 1, that "pregnant women who have been in employment for over one year are entitled to thirty-five days' maternity leave without loss of remuneration or employment"; out of the 35 days, 30 must be taken after the birth and the remaining five may be used either before or after the birth. Article 37, paragraph 3, provides for the possibility of the period of 35 days to be increased in exceptional cases. The right to maternity leave without loss of remuneration is guaranteed for up to three births.

334. Article 35, paragraph 2, of the same law states that "during pregnancy and for three months following the birth, women should not engage in any tasks which could cause discomfort".

335. With regard to employees of the Public Administration, the Statute of the Macau Public Employees Association, approved by Decree-Law 87/89/M of 21 December (annex 125), amended by Decree-Law 52/90/M of 10 September, Decree-Law 37/91/M of 8 June, Decree-Law 1/92/M of 6 January, Law 11/92/M of 17 August, Decree-Law 70/92/M of 21 December and by Decree-Law 80/92/M of 21 December, states in article 94, paragraph 1, that "employees of the Administration are entitled to take ninety days' maternity leave". Out of these days, 60 must be used immediately after the birth, while the remaining 30 may be used either before or after the birth. The period of 90 days may be increased in exceptional cases.

336. It should also be pointed out that mothers are allowed special working hours to permit feeding of infants (art. 94, para. 8, of the above-mentioned Law).

337. The Statute of the Macau Public Employees Association not only protects motherhood but also fatherhood: "when a child is born, the father is entitled to five consecutive days' leave" (art. 95, para. 1). In the event of the death of the mother in the period following childbirth, the father is entitled to leave of absence to take care of the child for a period equal to that to which the mother would have been entitled, and lasting at least 20 days (art. 95, para. 2).

338. In the case of the adoption of a new-born baby, employees are entitled to 30 days' leave (art. 96, para. 1, of the same Statute).

339. With regard to sick leave, the Statute allows for up to 15 days' leave each year to take care of relatives (parents, spouse or children) (art. 100, paras. 1 and 2).

340. Family planning. Family planning is intended to improve the health and well-being of the family and consists of providing individuals and couples with information, knowledge and the means which will allow them to decide freely and responsibly the number of children they wish to have and when.

There is a family planning programme in Macau which is provided free of charge by the Territory's health centres. Article 6, paragraph 2, of Decree-Law 24/86/M states that "patients have access to the health centre in their area of residence for the purposes of family planning". Article 7 (d) of the same law enshrines the principle that all medication and appliances used in family planning are totally free of charge, provided at the expense of the Territory.

Article 24

Paragraph 1

341. In accordance with various constitutional principles, Macau's legislation embodies a high degree of protection of children both by society and by the State, with special measures existing for orphans and abandoned children.

342. Article 122 of the Civil Code (annex 4), in pursuance of the Convention on the Rights of the Child signed in New York on 26 January 1990, and article 49 of the Portuguese Constitution (PC) (dealing with the right to vote), sets the age of legal majority at 18 years.

343. On the level of legislation, the protection of children is ensured in several laws.

344. Article 1,877 et seq. of the Civil Code define and regulate the exercise of parental power - understood as both a power and duty - which, through marriage, is shared by both partners and exercised by mutual accord. Should there be disagreement over maters of particular importance, either party may have recourse to the courts to resolve the matter. In this case a child over 14 years of age shall also be entitled to a hearing unless there are strong reasons against this.

345. Article 342 to 348 of the Criminal Code punish abducting and concealing minors and also exposing or abandoning them.

346. The Statute for the Jurisdictional Assistance of Overseas Minors (SJAOM) and corresponding regulations, approved by Decree 417/71 of 29 September, published in the Official Gazette of Macau No. 42 of 16 October (annex 101) and Decree 484/71 of 8 November, published in the Official Gazette of Macau No. 47 of 20 November (annex 126), respectively, regulates the jurisdiction of minors with the goal of, firstly, assisting minors by applying protective measures, welfare or education and, secondly, adopting the appropriate civil measures to protect their rights and interests.

347. Articles 38 to 42 of Decree-Law 24/89/M of 3 April (annex 25) which establishes the legal framework for labour relations, regulates work engaged in by minors. This law contains a general principle imposing on employers the duty to provide minors in their employment with appropriate working conditions for their age, and in particular to prevent any damage to their physical, spiritual and moral development.

348. At an institutional level, the protection of minors is ensured by the combined activities of various bodies.

349. The Macau Social Welfare Institute (MSWI) is a public department charged with implementing the Administration's social welfare policy. It operates through promoting the social and family well-being of individuals and social groups and adopts measures to prevent and remedy the social or economic needs of children, young people and families. To these ends, the MSWI is responsible for running or providing technical support for structures such as crèches, kindergartens and old peoples homes. To ensure contact with the community and to promote programmes on a local level, the MSWI has local coordination and assistance centres. The MSWI is involved in cooperating with the courts with regard to orphans and abandoned children with activities ranging from helping to place the children with families to accommodating them in homes and also providing support in the process of adoption. The MSWI also provides assistance for mentally handicapped children by licensing centres for the handicapped and offering financial and technical support to centres providing full-time care and rehabilitation both for day patients and full-time resident minors with mental handicaps.

350. As has already been discussed under the information pertaining to article 10 of the Covenant, when an individual aged under 16 years is involved in a crime or breach of criminal law, he may be the object of protective measures, social welfare or education as decided by the competent court which, in this case, is the Court of General Jurisdiction (art. 28 of Decree-Law 17/92/M of 2 March (annex 56).

351. As stated earlier, should a decision be made to send the minor to an educational establishment, this shall be the Young Offenders Institution.

352. The measures decided by the court are implemented by the Department of Social Rehabilitation which is responsible for the observation and internment of individuals aged under 16. They must follow each case and cooperate in the custodial measures to be taken and the re-education of the minor through professional and educational training.

353. The public assistance service offered by the Public Prosecutor's Department should also be mentioned although this is more fully described under the information pertaining to article 25 of the Covenant. The Public Prosecutor's Department is responsible for promoting measures to protect, assist or educate minors in care and represents their rights and interests (art. 14 (a), of Decree-Law 55/92/M of 18 August (annex 61)).

Paragraph 2

354. As regards the right to a name, the right to a personal identity and personality is enshrined in civil law (art. 72 of the Civil Code).

355. Identity is safeguarded in two ways. On the one hand, every person is entitled to use a name and to impose on others the obligation to address him by this name. Both the omission of the name of a person and address by a different name are regarded as illegal. On the other hand, each person is safeguarded against the use of his name by a third party.

356. Articles 1,875 and 1,876 of the Civil Code discuss surnames, stating that the minor may use the names of his father and mother or of only one of them, the choice lying with the parents. Should there be no agreement on this, the judge shall rule in accordance with the interests of the minor. When paternity is not proven, the minor may take the surnames of the husband of the mother should either party declare before the registrar that this is their wish.

357. The Civil Registration Code, approved by Decree-Law 14/87/M of 16 March (annex 124) stipulates, in article 1, that births should be registered in the Macau Birth Registration Office. Should the birth not be registered within 30 days, proceedings shall be initiated and the Public Prosecutor's Department, having gathered the necessary information, shall request the judge to order a compulsory registration (arts. 70 and 72 of the same Code). In accordance with article 77 of the Civil Registration Code, the complete name may not contain more than six elements of which only two may constitute the first name and four the surname.

358. On registration of birth, Portuguese nationals should be given Portuguese names or names adapted to the Portuguese language. A special regime exists for nationals of Chinese origin, allowing a name which corresponds to Chinese custom and this may be registered in Chinese characters with a compulsory standard Romanized version included. Portuguese nationals of foreign descent or non-Portuguese nationals are allowed to use foreign names in their original form so long as these names are permitted in their country of origin.

359. Abandoned children, in other words new-born babies whose parents are not known and who have been discovered abandoned anywhere in Macau, must also have their births registered (arts. 81-83 of the Civil Registration Code). In this case, the registrar shall give the abandoned child a complete name composed of a maximum of three names in common use, suggested by a feature of the child or by the place where he was found without, however, drawing attention to his status as an abandoned child (art. 84 of the Code).

Paragraph 3

360. The Universal Declaration of Human Rights states, in article 15, paragraph 1, that "everyone has the right to a nationality". This is recognized by article 26, paragraph 1, of the PC, which states that all persons have the right to nationality.

361. The PC defines the concept of Portuguese citizenship as meaning that "all persons are Portuguese citizens who are considered as such by law or under an international convention" (art. 4). It also states that "a person may be deprived of citizenship or subjected to restrictions on his or her civil capacity only in the cases and under conditions laid down by law, and never on political grounds" (art. 26, para. 3). Contrary to prior constitutions (apart from the 1911 one), the current PC does not differentiate between Portuguese nationals by origin and by naturalization.

362. The same principle applies to those nationals who have lost and then re-acquired Portuguese citizenship.

363. The PC enshrines the principle of equivalency between aliens and stateless persons and Portuguese nationals and, apart from the exceptions provided for in article 15, paragraph 2 [which deal, predominantly, with the holding of political office] the enjoyment of fundamental rights does not depend on possession of Portuguese citizenship. There is a special regime for foreigners who are citizens of Portuguese-speaking countries (art. 15, para. 3, of the PC).

364. The Nationality Act is applied in Macau (Law 37/81 of 3 October, published in the Official Gazette of Macau, No. 46 of 16 November 1981 (annex 127)). According to this law, nationality consists of both a legal link to the Portuguese State and a genuine fundamental right of the individual. The concept of nationality is regarded as a fundamental right of the individual subject to the constitutional principles adopted in 1976: equality of the spouses, non-discrimination against children born out of wedlock, and the prohibition of the loss of nationality for political reasons. The Nationality Act also strove to achieve a balance between the criteria of jus soli and jus sanguinis, having previously emphasized links of parentage rather than territorial links.

365. The various modes of acquiring Portuguese nationality in the Nationality Act can be divided as follows:

(a) Portuguese nationality by origin. Acquisition of Portuguese nationality by origin covers two situations: acquisition by effect of the law and acquisition by the satisfying of conditions set by law, depending ultimately on the wishes of the interested parties. The first situation covers three different possibilities:

(i) The child of a Portuguese father or mother born in Portuguese territory or territory under Portuguese administration;

(ii) The child of a Portuguese father or mother born abroad if the Portuguese father or mother was resident abroad in the service of the Portuguese State;

(iii) A child born in Portuguese territory who has no other nationality.

The law expressly establishes the presumption of birth in Portuguese territory or territory under Portuguese administration in the case of children abandoned in such territory at birth, thereby protecting them from statelessness. The second situation involves the case of children of a Portuguese father or mother, born abroad, and of children of a foreign father or mother born in Portugal. With regard to the former, the law requires that they make a statement to the effect that they wish to be Portuguese or have their birth entered in the Portuguese civil register. With regard to the latter, the law requires that the foreign parents have been living in Portuguese territory for at least six years, that they are not in the service of their State, and that they have made a declaration to the effect that they wish to be Portuguese;

(b) Portuguese nationality by naturalization. Acquisition of Portuguese nationality by naturalization occurs when nationality has not been acquired at birth but later on in the life of the interested party. Law 37/81 makes provision for the acquisition of Portuguese nationality under three distinct categories:

(i) As a result of the wish of the interested party, if certain conditions are satisfied;

(ii) As a result of the law, as the subject of full adoption by a Portuguese national;

(iii) At the discretion of the Government - naturalization - which may only intervene after certain legal conditions have been satisfied.

366. The legislature has attempted to achieve two objectives: harmonizing nationality within the family, and granting the Government a certain amount of power to define who should become a Portuguese citizen.

367. The Nationality Act provides for three situations in which Portuguese nationality can be acquired as a result of the individual stating his wish:

(a) For under-age or incapacitated children of those who have acquired Portuguese nationality, with the law providing that they may also acquire nationality by making a declaration to this effect;

(b) In the case of marriage, so long as the person marrying the Portuguese national declares in the record of marriage that it is his or her intention to acquire this nationality;

(c) By means of a declaration, for those who have lost their nationality while incapacitated.

368. By attributing Portuguese nationality to the subject of a full adoption the intention has been to facilitate the total integration of the adopted child into the adoptive family. Adoptions effected by Portuguese nationals abroad which can be recognized in Portugal may lead to the acquisition of Portuguese nationality.

Article 25

369. The rights provided for in article 25 of the Covenant are guaranteed in Macau's system by articles 48 to 50 of the Portuguese Constitution (PC), which have already been discussed in Portugal's second periodical report (CCPR/C/42/Add.1, paras. 480-481). Article 25 (b) of the Covenant was the object of restrictions in the case of its application to Macau, in the Assembly of the Portuguese Republic's resolution No. 41/92. The reasons for this reservation shall be discussed in greater detail below. Nevertheless, it should be noted that a large proportion of the rights contained in subparagraph (b) of this provision of the Covenant are currently in force in Macau.

Subparagraph (a)

370. With regard to article 25 (a) of the Covenant, the principle contained in article 48, paragraph 1, of the PC is in effect in Macau, according to which "all citizens shall have the right to take part in political life and the control of public affairs, either directly or through freely-elected representatives".

371. Mention should also be made, at a legislative level, of Law 10/88/M of 6 June (annex 18), and to Law 10/91/M of 29 August, dealing with electoral registration, Law 4/91/M of 1 April (annex 38), approving the Electoral Act for the Legislative Assembly of Macau, Decree-Law 51/91/M of 15 October (annex 47), and Law 25/88/M of 3 October (annex 22), approving the electoral regime for the Municipal Assembly.

372. There are three kinds of elected bodies in Macau: the Legislative Assembly of Macau, the Consultative Council and the Municipal Assemblies. As has already been mentioned under the information pertaining to article 1 of the Covenant, of the 23 members of the Legislative Assembly of Macau, 8 are elected by direct, universal suffrage and 8 by indirect suffrage. Five of the 10 members of the Consultative Council are elected: 2 by the municipalities and 3 by representatives of social interests within the territory (art. 44 of the OS; art. 1 of Decree-Law 51/91/M of 15 October). The Municipal Assembly of Macau has 13 members of whom 10 are elected, 5 by direct suffrage and 5 by indirect suffrage (art. 15 of Law 24/88/M of 3 October (annex 21). The Municipal Assembly of the Islands has 9 members of whom 6 are elected, 3 by direct suffrage and 3 by indirect suffrage (art. 15 of Law 24/88/M).

373. Voting capacity and the right to suffrage. The Electoral Act for the Legislative Assembly of Macau (annex 38) grants active voting capacity in direct elections to inhabitants of Macau aged 18 or over who have been resident in the Territory for at least seven consecutive years and are registered in the electoral roll. Inhabitants of Macau who are endowed with active voting capacity and are aged 21 or over are granted passive voting capacity (arts. 2 and 4).

374. With respect to direct elections for the Municipal Assemblies, Law 25/88/M states that individuals who have been registered in the relevant municipality are electors (art. 1).

375. In the indirect elections for the Legislative Assembly, associations or organizations representing organized social interests which are recognized by law, have been incorporated for over three years and are registered according to the electoral registration law are endowed with active voting capacity (art. 6 of the same Law). Should it not be possible to apply article 6 of the Electoral Act, recognition of an association or organization as representing organized social interests is the responsibility of the Governor, pursuant to a request submitted by the relevant association or organization, and on the opinion, depending on the case, of the following bodies:

(a) The Standing Committee on Coordinating Social Affairs*, for associations and organizations representing business, labour and professional interests;

(b) The Committee for Social Action, for associations and organizations representing welfare interests;

(c) The Culture Committee, for association and organizations representing cultural interests;

(d) The Education Committee, for associations and organizations representing educational interests;

(e) The Sports Council, for associations and organizations representing sporting interests (art. 4, paras. 1 and 2, of Law 4/91/M of 1 April).

376. Appeals can be made against a refusal to recognize an association or organization, or against recognition as a representative of an interest which is different from that requested (art. 4, para. 3; art. 5 of Law 4/91/M).

377. Electoral disputes have absolute priority in relation to all judicial services, with the exception of those aimed at guaranteeing personal freedom (art. 6 of Law 4/91/M).

378. Members of the Consultative Council elected by representatives of social interests within the Territory are subject to the norms concerning voting capacity which regulate indirect elections for members of the Legislative Assembly (art. 3, para. 1, of Decree-Law 51/91/M).

379. Suffrage is a right and a civic duty to be exercised personally and in a public place (art. 88 and 89, paras. 2 and 4, of the Electoral Act for the Legislative Assembly of Macau; arts. 70 and 72, para. 1, of Law 25/88/M). Prior to a voter being permitted to vote, he must be registered in the electoral roll and have his identity checked by the election officials (art. 92, para. 1, of the Electoral Act for the Legislative Assembly of Macau; art. 83 of Law 25/88/M). Voters must not, under any circumstances, be forced to reveal their vote (art. 93, para. 1, of the Electoral Act for the Legislative Assembly of Macau; art. 73, para. 1, of Law 25/88/M).

380. Electoral registration. The electoral registration of individuals and collective persons for the direct and indirect elections to the Legislative Assembly, the Consultative Council and the municipalities is regulated by Law 10/88/M of 6 June, amended by Law 10/91/M of 29 August (annex 18). This Law provides for the organization and carrying out of electoral registration of individuals for direct elections (arts. 8-28), the registration of collective persons for indirect elections (arts. 29-34), and the rules covering breaches committed during or as a result of electoral registration

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* A body which was created by Decree-Law 31/87/M of 1 June, as mentioned under article 22 of the Covenant.

(arts. 35-48). Electoral registration is not compulsory although it is the right and civic duty of all individuals and collective persons entitled to participate to ensure that they are registered (art. 2, para. 1, of Law 10/88/M).

381. Registration of individuals for direct elections is organized by registration committees divided on a geographical basis, and whenever there is a sufficiently large number of voters, committees may set up subsidiary registration offices (arts. 8 and 9 of Law 10/88/M). The annual period during which individuals can register for direct elections must last 30 days (art. 14 of Law 10/88/M). Voters must register in the committee offices or the subsidiary registration office appropriate to their place of residence by presenting a correctly completed application form (arts. 17, para. 1, and 18, para. 1, of Law 10/88/M).

382. Registration on the electoral roll is certified by means of a numbered and authenticated polling card (art. 20 of Law 10/88/M).

383. Voters are registered on electoral rolls which are compiled sequentially by registration number and are updated annually. Within two weeks of the close of the annual registration period, the electoral rolls are put on display in the electoral registration committee office for a period of 10 days for interested parties to consult them and submit any complaint (art. 21, paras. 1 and 2 and art. 24 of Law 10/88/M).

384. Jurisdictional appeal against the decisions of the electoral registration committee is safeguarded by law and effected by means of a swift, simple procedure (art. 26 of Law 10/88/M, with the presentation conferred by Law 10/91/M, and articles 5 and 6 of Law 4/91/M and articles 29 to 31 of the Electoral Act for the Legislative Assembly of Macau, annexed to Law 4/91/M).

385. The registration of collective persons for indirect elections is organized by an electoral registration committee operating in cooperation with the Civil Service and Administration Department, the body responsible for maintaining an up-to-date list of collective persons by district and order of interests (arts. 29 and 30, para. 1, of Law 10/88/M). Collective persons falling within the four electoral colleges established in the electoral legislation, namely moral, cultural, welfare and economic-professional, may register to vote (arts. 4 and 30 of Law 10/88/M). Collective persons with voting capacity register by presenting a correctly completed application form (art. 31, para. 1, of Law 10/88/M). Collective persons who satisfy the legal requirements are registered in electoral rolls which are updated annually (art. 33 of Law 10/88/M). The registration of collective persons for indirect elections is also subject to the provisions concerning the registration of individuals (art. 34 of Law 10/88/M) of which the guarantees of legal appeal are of particular importance.

386. <u>Electoral system and elections</u>. According to article 8 of the Electoral Act for the Legislative Assembly of Macau, "eight members shall be elected by universal direct, secret and periodic suffrage". These members are elected in a single voting session which covers the city of the Name of God of Macau and the Islands of Taipa and Coloane, on plurinominal ballot lists following the

system of proportional representation with each voter entitled to a single vote for each list (art. 9 of the Electoral Act for the Legislative Assembly of Macau).

387. As mentioned above, with regard to article 22 of the Covenant, civic associations and candidacy committees are entitled to propose candidates (art. 20 of the Electoral Act for the Legislative Assembly of Macau).

388. The ballot lists presented for direct elections should contain at least four candidates in the order presented on the relevant declaration of candidature, and mandates are conferred on candidates according to the same order of precedence (arts. 10 and 12 of the Electoral Act for the Legislative Assembly of Macau). The conversion of votes into mandates is done according to the following rules:

(a) The number of votes per candidate is counted separately;

(b) The number of votes obtained by each candidate is divided successively by 1, 2, 4, 8 and subsequent multiples of two up to the number of mandates to be conferred, after which the quotients are aligned in decreasing order of size in a series of as many terms as there are mandates;

(c) The mandates belong to the candidates corresponding to the terms of the series established by the preceding rule, with each candidate receiving as many mandates as it has terms of series (art. 11 (a) and (c), of the Electoral Act).

389. According to article 14 of the Electoral Act for the Legislative Assembly of Macau, "eight members shall be elected by indirect, secret and periodic suffrage to represent organized social interests". These eight members are elected indirectly by electoral colleges according to the organized social interests which they represent, in the following manner:

(a) The electoral college of business interests elects four members;

(b) The electoral college of labour interests elects two members;

(c) The electoral college of professional interests elects one member;

(d) The electoral college of welfare, cultural, education and sporting interests elects one member (art. 15, para. 1, of the same Electoral Act).

390. Each registered association or organization is entitled to 11 votes which are cast by an equal number of voters chosen from amongst the members of the respective boards or management in control at the date when the elections were set (art. 15, para. 3, of the Electoral Act). Nobody may vote as a representative of more than one association or organization for the same or a different electoral college (art. 15, para. 4, of the Electoral Act).

391. Plurinominal lists submitted for indirect election must contain the same number of candidates as mandates conferred on the respective electoral college (art. 16 of the Electoral Act).

392. The conversion of votes into mandates is done in accordance with the rules already described above for direct elections (art. 17, para. 1, and art. 11 of the same Electoral Act). On single-name lists, the candidate winning the greatest number of votes shall win the mandate (art. 17, para. 2, of the same Law).

393. The Electoral Act for the Legislative Assembly of Macau also provides detailed regulations on the organization of elections, electoral campaigns, suffrage, the counting of the votes, conflicts in voting and the counting of the votes, the district electoral committee and electoral breaches.

394. Elections are organized and coordinated by a District Electoral Committee consisting of five citizens of recognized merit and standing who are responsible, amongst other tasks, for:

(a) Furthering objective clarification of voting procedure for voters;

(b) Ensuring candidates enjoy effective equality of action and propaganda during the electoral campaign;

(c) Proposing the distribution amongst candidates of air space on radio and television;

(d) Evaluating the regularity of electoral income and expenditure;

(e) Informing the Public Prosecutor's Department of any electoral breaches of which it learns (art. 133, para. 2, and art. 134 of the Electoral Act for the Legislative Assembly of Macau).

395. The members of the Committee carry out their duties independently and are irremovable. They may not present themselves as candidates for the Consultative Council (art. 137, paras. 1 and 2, of the same Electoral Act).

396. The elected members of the Consultative Council elected by the municipalities are chosen from amongst their respective members, with one for each of the municipal councils (art. 44, para. 2 (a), of the OS; art. 2, para. 1, of Decree-Law 51/91/M). The elected members of the Consultative Council representing the social interests of the Territory are chosen according to the following electoral colleges, each one of which has one member:

(a) The electoral college of business interests;

(b) The electoral college of labour interests;

(c) The electoral college of professional, welfare, cultural, educational and sporting interests (art. 3 of Decree-Law 51/91/M).

The election of the elected members of the Consultative Council is subject to the same norms as those governing the electoral system and elections for the indirect election of members of the Legislative Assembly (art. 2, para. 2, and art. 3, para. 1, of Decree-Law 51/91/M).

397. Law 24/88/M of 3 October regulates the composition of the Municipal Assemblies of the municipalities of Macau and of the Islands. According to article 15, paragraph 1, of this Law, the Municipal Assembly consists of 13 members in the municipality of Macau and of 9 members in the municipality of the Islands.

398. The Municipal Assembly of Macau is composed of:

(a) Five members elected by direct suffrage;

(b) Five members elected by indirect suffrage, three of whom represent moral, cultural and welfare interests and two others economic interests; and

(c) Three members appointed by the Governor (art. 15, para. 2, of Law 24/88/M).

399. The Municipal Assembly of the Islands is composed of:

(a) Three members elected by direct suffrage;

(b) Three members elected by indirect suffrage, two of whom represent moral, cultural and welfare interests and one other economic interest; and

(c) Three members appointed by the Governor (art. 15, para. 3, of Law 24/88/M).

400. The electoral regime for the Municipal Assemblies is governed by Law 25/88/M of 3 October, article 1 of which states that "voters are individuals and collective persons registered in the respective municipal district". Article 14 of Law 25/88/M states that suffrage is universal and secret for the members elected by direct suffrage. Members of the Municipal Assemblies elected by direct suffrage are presented in Plurinominal lists submitted by civic associations or candidacy committees (arts. 15 and 16 of Law 25/88/M). Members of the Municipal Assemblies elected by indirect suffrage are elected in secret elections by means of the presentation of Plurinominal lists; collective persons with voting capacity have half the number of votes of places on the respective boards (art. 31, paras. 1 and 2, and art. 33 of Law 25/88/M).

401. Under the terms of articles 24 and 25 of Law 25/88/M of 3 October, both the Municipal Council of Macau and the Municipal Council of the Islands consist of a president, a vice-president and three councillors chosen from the members of the Municipal Assembly. In addition to the president and the vice-president, one of the three councillors is employed on an exclusive, full-time basis. The president and the full-time, exclusively employed councillor are appointed by the Governor of Macau. The two part-time councillors are chosen by the Municipal Assembly.

402. Nevertheless, the Municipal Council of the Islands is temporarily composed of a president, a vice-president and only one councillor chosen from amongst the members of the Municipal Assembly. The president and

vice-president are employed on a full-time, exclusive basis and the councillor on a part-time basis, all three of them being appointed by the Governor (art. 51, paras. 1 and 2, of Law 25/88/M of 3 October).

403. The organization and coordination of the elections for the Municipal Assemblies is the responsibility of an Electoral Committee which has similar powers to the District Electoral Committee described above with regard to the elections for the Legislative Assembly (arts. 7-13 of Law 25/88/M).

404. It should be noted that the following principles are safeguarded in the election campaigns for the elected bodies of Macau:

(a) Freedom of propaganda;

(b) Equality of opportunity and treatment of the various candidates;

(c) Impartiality of the public authorities vis-à-vis all candidates;

(d) Monitoring of electoral accounts (arts. 62-87 of the Electoral Act for the Legislative Assembly of Macau; art. 3, para. 1, of Decree-Law 51/91/M; arts. 34-55 of Law 25/88/M).

405. The residents of Macau consequently display a high degree of participation in the political life of the Territory through freely elected representatives. The powers of the Legislative Assembly show that this participation has a direct influence on public affairs.

406. Of the wide range of powers enjoyed by this body, the following should be noted: the power to draft legislation in almost all domains, with the exception of some issues concerning the internal organization of the Administration; and far-reaching powers of political control over the Governor and the Administration.

407. The Legislative Assembly has legislative powers over the following matters, amongst others:

(a) The status and capacity of persons;

(b) Rights, freedoms and safeguards;

(c) The definition of crimes, sentences, security measures and respective conditions and criminal procedure;

(d) The general regime for concessions;

(e) The essential features of tax contributions;

(f) The basic legal framework for local administration, including local finance;

(g) The legal framework governing the relationship between central and local administrative bodies in Macau;

(h) Public associations, safeguards of the residents vis-à-vis the Administration and the civil liability of the Administration; and

(i) The basic framework for the public administration of Macau.

408. In addition to these powers, the Legislative Assembly has clear powers of political control over the Governor and the Administration, including:

(a) The power to submit legal documents issued by the Governor to the Constitutional Court to evaluate their constitutionality and legality (art. 30, para. 1 (a), of the OS);

(b) The power to evaluate the activities of the Governor, the Under-Secretaries and the Administration. This is divided into two categories:

(i) The power conferred on members to submit questions in writing for the clarification of public opinion on any activities of the Governor or the Administration of the Territory (art. 10, para. 1 (h), and art. 169 of the Regulations of the Legislative Assembly (annex 14));

(ii) The power to consult or to request information from any public body concerning matters of public administration (art. 10, para. 1 (j), of the Regulations of the Legislative Assembly);

(c) The power to pass a vote of no confidence in government action (art. 30, para. 2 (c), of the OS; arts. 158-161 of the Regulations of the Legislative Assembly);

(d) The power to ratify or refuse ratification of decree-laws of the Governor (art. 15 of the OS; arts. 152-157 of the Regulations of the Legislative Assembly of Macau);

(e) The power to approve the Finance Act, the law which permits the Administration to collect revenue and carry out public spending, which the Governor requires in order to draw up the Annual Budget (art. 30, para. 1 (g), of the OS; arts. 174-176 of the Regulations of the Legislative Assembly). When the Finance Act is under discussion, the Government Action Plan for the respective year is also discussed. This is the most important phase of political discussions between members and the representatives of the Administration on the political aims and programmes of the Governor. It gives the Governor and his Under-Secretaries an opportunity to explain to the Assembly their aims, plans and expectations in the various fields of government activity;

(f) The power to examine the Territory's statements of account each financial year (art. 30, para. 2 (b), of the OS; arts. 177-179 of the Regulations of the Legislative Assembly);

(g) The power to authorize the Governor to contract and offer loans and to undertake other credit activities according to the law, and to furnish guarantees (art. 30, para. 1 (h), of the OS).

409. The residents of Macau also have the right of petition, enshrined in article 52 of the PC, according to which all citizens are entitled, individually or jointly, to submit to any authority petitions, representations, demands or complaints in order to defend their rights, the Constitution, laws or the general interest. This right is reflected in Macau in several ways.

410. One of these has been to assist citizens in submitting suggestions, demands and complaints concerning the activities of the Administration (art. 3, para. 2, of Decree-Law 60/86/M of 31 December (annex 84), creating the Public Information and Assistance Centre (PIAC)). Citizens may address the PIAC in Portuguese or Chinese, in writing or orally, requesting clarification of the Administration's activities, indicating criticism, suggestions and opinions of these activities, and submit demands and complaints concerning issues involving them personally and directly and to do with acts or omissions of public services (art. 5, paras. 1, 2 and 3, of the above-mentioned Decree-Law). The PIAC channels issues presented by citizens to the various services of the Administration, providing users with the information they require to resolve these matters (art. 7 (a), of Decree-Law 60/86/M of 31 December).

411. As has already been mentioned in relation to article 14 of the Covenant, the PIAC also cooperates with the Office for Legislative Affairs to provide information and legal advice for people without financial means through the offices of the Legal Aid Bureau (Decree-Law 14/91/M of 18 February).

412. Under the public assistance service provided by the Public Prosecutor's Department, mentioned in the information pertaining to article 24 of the Covenant, the deputies of the Public Prosecutor receive interested parties each week and, should the case fall within their responsibility, they proceed with the relevant action.

413. In an attempt to permit citizens to better understand the services of the Macau Security Forces, and how cases are dealt with, two assistance and information centres were recently opened. These information centres are open every day and are intended to receive or provide general information connected to the Macau Security Forces; clarification is provided by employees of the three corporations of which the Security Forces consist.

414. Taking into account the need to increase communication between the Administration and Macau's citizens, Governor's Order 106/GM/91 of 27 May (annex 43) states that "all activities engaged in by the services and public organizations of Macau should be guided by the principles of legality, accountability and efficiency", and that these services should "continue to attempt to simplify internal procedures and communication between services and provide reception counters or areas with trained staff, with those in charge of services and public organizations constantly ensuring prompt and complete compliance with the legislation in force in their domain".

Subparagraph (b)

415. The principle of regular elections for the elected bodies of the Territory has been observed since 1976 when the OS was approved. With regard to the Legislative Assembly, elections were held in 1976, 1980, 1984, 1988 and 1992. The elections for the Consultative Council were also held in 1976, 1980, 1984, 1988 and 1992. Elections for the Municipal Assemblies, created by the above-mentioned legislation of 3 October 1988, were held in 1989 and 1993.

416. The legality of election activities is effectively safeguarded in the requirements demanded by law. The legality of elections begins with compliance with the principles regulating election campaigns mentioned above and scrupulously fulfilled and safeguarded by the District Electoral Committee and the Electoral Committee which ensure that candidates receive effective equality of treatment and propaganda.

417. The boards of the voting sessions consist of more than one member, and members are chosen from amongst the delegates of the different lists submitted for election (arts. 44 and 45 of the Electoral Act for the Legislative Assembly of Macau; arts. 57-59 of Law 25/88/M).

418. Voting ballots display the identity of all the lists submitted for election and are printed on plain non-transparent white paper (art. 58, para. 1, of the Electoral Act for the Legislative Assembly of Macau; art. 82, para. 1, of Law 25/88/M).

419. When each voting session is opened, the president of the respective board inspects the voting booths and exhibits the ballot box to the voters to prove to them all that it is empty (art. 95, para. 2, of the Electoral Act for the Legislative Assembly of Macau; art. 74, para. 1, of Law 25/88/M). Each voter must present himself to the respective board of the voting session, indicating his registration number in the electoral roll and identifying himself to the president of the board (art. 104, para. 1, of the Electoral Act for the Legislative Assembly of Macau; art. 83, para. 1, of Law 25/88/M). Once the voter's identity has been checked, the president states his registration number in the electoral roll and his name aloud and once his registration has been verified, he is handed a ballot slip (art. 104, para. 3, of the Electoral Act for the Legislative Assembly of Macau; art. 83, para. 3, of Law 25/88/M). The voter immediately goes to the voting booth and, once inside, writes a cross or the letter V in the square corresponding to the candidate of his choice, or can choose not to indicate any candidate. He folds the slip in four and hands it to the president of the board of the voting session who places it in the ballot box while the overseers mark the electoral roll in the appropriate column and in the line corresponding to the voter to indicate the vote has been used (art. 104, paras. 4 and 5, of the Electoral Act for the Legislative Assembly of Macau; art. 83, paras. 4 and 5, of Law 25/88/M).

420. When voting has closed, the president of the board of the voting session proceeds with counting the unused slips and seals them with wax in an appropriately marked envelope for them to be returned to the president of the municipal chamber or the Electoral Committee (art. 110 of the Electoral Act for the Legislative Assembly of Macau; art. 87 of Law 25/88/M). The counting

of the votes is done by various members of the board of the voting session after checking that the number of voters coincides with the number of voting slips in the ballot box, as regulated by article 112 of the Electoral Act for the Legislative Assembly of Macau and article 89 of Law 25/88/M. Those ballot slips subject to complaint or contestation are initialled and then submitted to the count committee with the relevant documents (art. 116 of the Electoral Act for the Legislative Assembly of Macau; art. 90 of Law 25/88/M. Ballot slips are placed in packages, sealed with wax and entrusted to the court security guards (in elections for the Legislative Assembly) or the District Committee security guards (in elections for the Municipal Assemblies) (art. 117, para. 1, of the Electoral Act for the Legislative Assembly of Macau; art. 91, para. 1, of Law 25/88/M).

421. The right to complain, contest or counter-contest eventual irregularities in all or part of the voting or counting procedures and to appeal against the decisions concerning any complaint, contestation or counter-contestation is safeguarded by law (arts. 106 and 129-132 of the Electoral Act for the Legislative Assembly of Macau; arts. 86 and 103-105 of Law 25/88/M).

422. As can be seen, the elections for elected bodies in Macau also respect the principle of secret suffrage (arts. 8 and 14 of the Electoral Act for the Legislative Assembly of Macau; arts. 14 and 33 of Law 25/88/M; art. 2, para. 3, and art. 3, para. 1, of Decree-Law 51/91/M). The principle of universal suffrage is also observed.

423. For elections by direct suffrage, this rule is explained in article 8 of the Electoral Act for the Legislative Assembly of Macau and article 14 of Law 25/88/M. For elections by indirect suffrage, all associations or organizations representing the social interests in question are entitled to vote according to article 15 of the Electoral Act for the Legislative Assembly and article 31 of Law 25/88/M. Nevertheless, elections carried out in the exercise of this right are not usually described as being universal suffrage.

424. This was one of the reasons which moved the Assembly of the Republic to apply a reservation in the case of Macau to the application of article 25 (b) of the Covenant (art. 3 of the Assembly of the Republic's resolution 41/92).

425. To be more specific, this clause stipulates that "article 25, subparagraph (b) of the International Covenant on Civil and Political Rights shall not be applied to Macau as far as concerns the composition of elected bodies and the method of choosing and electing office-holders, defined in accordance with the Constitution of the Portuguese Republic, the Organic Statute of Macau and the provisions of the Sino-Portuguese Joint Declaration on the Question of Macau". It was understood that this reservation should be made in order to avoid any doubts arising from the existence of members appointed by the Governor or elected by indirect suffrage to the Legislative Assembly, the Consultative Council or the Municipal Assemblies.

426. As can be seen from the electoral systems described above, the elections by indirect suffrage also respect the principles of periodic, fair and secret elections, thereby ensuring the free expression of the will of the voters, in this case, organized social interests.

427. Similarly, as far as elections by indirect suffrage of the members of the Legislative Assembly are concerned, each association or organization representing organized social interests is entitled to 11 votes (art. 15, para. 3, of the Electoral Act for the Legislative Assembly of Macau). In the elections by indirect suffrage of the members of the Municipal Assemblies, the number of votes for each association or organization depends on the number of members on the board of management (art. 31, para. 2, of Law 25/88/M).

Subparagraph (c)

428. Article 25 (c) of the Covenant is applied in Macau, namely the general rule of equal access to public service, as expressed in article 50, paragraph 1, of the Portuguese Constitution: "All citizens shall have the right of access to public office under conditions of equality and freedom." Constitutional protection is not limited to this, however. Article 47, paragraph 2, of the PC states that "all citizens shall have the right to enter the civil service, under conditions of equality and freedom, generally through public competitions".

429. In Macau's ordinary legislation, the rules of access to public service are defined in the Statute of Employees of the Civil Service of Macau. In accordance with article 10, requirements for public service include Portuguese or Chinese nationality and residence in Macau. Under the terms of article 46 of the Statute, equality of conditions and opportunities for all candidates is a general principle for the recruitment and selection of staff. Furthermore, article 47, paragraph 1, of the Statute states another general principle which has been enshrined in the PC: "Competitive examination is the normal procedure and compulsory for the recruitment and selection of staff into the civil service."

430. Recruitment and selection procedures are duly publicized by publishing a notice of competition in the Official Gazette of Macau.

431. Also in accordance with article 46 of the Statute, there is an opportunity to appeal against acts during the recruitment and selection procedure, either to hierarchical superiors or through the courts, thereby ensuring that individuals' interests are protected by the law.

Article 26

432. As has already been stated with regard to article 2 of the Covenant, article 13 of the Portuguese Constitution (PC) is applicable in Macau dealing with the absolute guarantee of the right to equal treatment; all residents are equal before the law and shall not be subject to discrimination. In practice, as is discussed under the information pertaining to article 14, paragraph 3, of the Covenant, Chinese has already been made an official language and all efforts are being made to overcome the difficulties resulting from the fact that some sectors of the Administration and the judicial system still function solely or partially in Portuguese.

433. The important work being effected in implementing Chinese as an official language in the administrative, legislative and judicial spheres should be highlighted. As far as the officialization of Chinese on an administrative

level is concerned, the right of any resident to communicate with the various public services of the Administration in Chinese has been ensured since 1989 (art. 2, para. 1, of Decree-Law 11/89/M of 20 February (annex 24)). Similarly, all forms connected with the relationship between the Administration and residents should be printed in both Chinese and Portuguese (art. 2, para. 2, of Decree-Law 11/89/M).

434. With regard to making Chinese an official language on a legislative level, it should be pointed out that since 1991, all normative acts issued by the Government of Macau have been published in Portuguese accompanied by the relevant Chinese translation, in accordance with the provisions of article 1 of Decree-Law 11/89/M of 20 February. All drafts and proposals of normative acts are now translated prior to being passed and are published together with the relevant Chinese version.

435. As far as the officialization of Chinese on a judicial level is concerned, the information pertaining to article 14, paragraph 3 (f), of the Covenant should be consulted.

436. As has already been mentioned in the information pertaining to article 14 of the Covenant, the officialization of Chinese on a legislative and judicial level is the responsibility of the Legal Translation Office.

Article 27

437. Macau is a territory where many different groups of various nationalities live together harmoniously with a wide variety of ethnic, religious, linguistic and cultural differences.

438. In terms of nationalities, according to the data collected in the latest (XIIIth) General Population Census carried out in 1991 (Census '91), 67.6 per cent of the residents of Macau are of Chinese nationality, 28.5 per cent have Portuguese nationality, 1.8 per cent have British nationality, 0.6 per cent have Philippine nationality, 0.2 per cent are of Thai nationality while 1.3 per cent have another nationality (annex 1, table 2.3).

439. Regarding place of birth, and taking into account the population present in Macau on the date the census was taken (30 August 1991), 40 per cent were born in Macau, 50.5 per cent were born in the People's Republic of China, 3.6 per cent were born in Hong Kong, 0.7 per cent were born in Portugal, 0.6 per cent were born in the Philippines, 0.6 per cent were born in Thailand and 4 per cent were born in another country or territory (table 1.2, Census '91).

440. Profession of a religious faith is as follows: 16.8 per cent of Macau's residents are Buddhists, 6.7 per cent are Catholics, 1.7 per cent are Protestants, 14 per cent profess another religion and 60.8 per cent declared that they had no religion (tables 2.4 and 2.5, Census '91). There are around 43 Buddhist temples in Macau, 16 Catholic places of worship (8 churches, 7 chapels and 1 hermitage), 2 protestant churches, 1 Lutheran chapel, 1 Evangelical church and 1 Mosque.

441. The mother tongue of most of Macau's population is Chinese, spoken in the dialect known as standard Cantonese (Yue). Other dialects of Chinese are spoken in Macau, although by smaller numbers and not as widely as standard Cantonese. The most important of these are Fuquienese (Min) and Shanghainese as well as other dialects from Jiangsu and Zhejiang of the Wu family of dialects. Mandarin/putonghua (Beifang) is spoken by a reasonable proportion of the Chinese population, particulary younger people and those who came to Macau in the 1980s. The Chinese schools in Macau, the mass media (namely the television stations in Macau and Hong Kong) and close contact with people from Canton (Guangdong) Province and Hong Kong have all made a marked contribution to the generalization of standard Cantonese (Yue) as the common language of Macau's Chinese population.

442. Portuguese is spoken by a small percentage of the population. For historical and cultural reasons, it is still the language commonly used in various areas of the Administration and in the courts.

443. Portuguese and Chinese are the official languages of Macau. English is the usual language of communication between the various linguistic communities living in Macau.

444. Government educational establishments may teach only in Portuguese or in Chinese. Government educational establishments teaching in Portuguese adopt Chinese as their second language and government educational establishments teaching in Chinese adopt Portuguese as their second language.

445. There are 4 government schools teaching in Portuguese, and 13 teaching in Chinese at primary and secondary level. Because they are autonomous, private educational establishments are absolutely free to choose the language of instruction and the second language, which must be included in the relevant prospectus. As far as private establishments are concerned, 8 teach in Portuguese, 133 in Chinese and 15 in English.

446. Every group within the population is entitled to share, with the other members of its group, its own cultural life, to profess and practise its own religion and to use its own language.

447. In Macau there is a general belief that the diversity of cultures, races, religious beliefs and languages spoken represents one of the Territory's greatest assets and that its harmonious way of life is one of the rocks on which the lifestyle of its population, protected in the Sino-Portuguese Joint Declaration is founded.

List of annexes*

Annex 1 XIIIth Population Census/IIIrd Housing Census - Global Results, Macau, Census and Statistics Department, 1993 [English translation].

Annex 2 Portuguese Constitution, approved by Decree 1/76 of 10 April, published in the Supplement to the Boletim Oficial de Macau [Official Gazette of Macau, as referred to hereinafter], No. 17 of 24 April 1976, with the amendments of Law 1/82 of 30 September, published in the 2nd Supplement to the Official Gazette of Macau No. 42 of 20 October 1982, of Law 1/89 of 18 July, published in the 2nd Supplement to the Official Gazette of Macau No. 33 of 18 August 1989, and of Law 1/92 of 25 November, published in the Official Gazette of Macau No. 50 of 14 December 1992 [English translation].

Annex 3 Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macau, published in the 3rd Supplement to the Official Gazette of Macau No. 23 of 7 June 1988 [English translation].

Annex 4 Civil Code, approved by Decree-Law 47,344 of 25 November 1966, published in the 2nd Supplement to the Official Gazette of Macau No. 46 of 23 November 1967, extended to Macau by Administrative Regulation 22,869 of 4 September 1967, published in the Official Gazette of Macau No. 46 of 23 November 1967 and changed by Administrative Regulation 318/74 of 24 April 1974, published in the Official Gazette of Macau No. 19 of 11 May 1974 with the amendments contained in the following legislation:

Decree-Law 261/75 of 27 May, published in the Official Gazette of Macau No. 13 of 27 March 1976, extended to Macau by Administrative Regulation 141/76 of 15 March, published in the Official Gazette of Macau No. 13 of 27 March 1976;

Decree-Law 605/76 of 24 July, published in the Official Gazette of Macau No. 40 of 6 October 1987;

Decree-Law 496/77 of 25 November, published in the Supplement to the Official Gazette of Macau No. 14 of 13 April 1978, extended to Macau by Normative Order 79/78, published in the Supplement to the Official Gazette of Macau No. 14 of 13 April 1978;

Decree-Law 32/91 of 6 May.

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* Available for consultation in the files of the Secretariat.

Annex 5 Commercial Code, approved by the Law of 28 June 1888, published in the Diário do Governo No. 203 of 6 September, extended to Macau by the Decree of 20 June 1894, with the amendments contained in the following legislation:

Law 1,505 of 7 December 1923, published in the Official Gazette of Macau No. 29 of 20 July 1946, extended to Macau by Administrative Regulation 10,887 of 5 March 1945, published in the above-mentioned Official Gazette of Macau;

Decree-Law 48,744 of 5 December 1968, published in the Official Gazette of Macau No. 51 of 21 December 1968;

Decree-Law 154/72 of 15 September, published in the Official Gazette of Macau No. 40 of 30 September 1972, extended to Macau by Administrative Regulation 534/72 of 14 September 1972, published in the above-mentioned Official Gazette of Macau;

Decree-Law 679/73 of 21 December, published in the Official Gazette of Macau No. 6 of 9 September 1974, extended to Macau by Administrative Regulation 49/74 of 26 January 1974, published in the above-mentioned Official Gazette of Macau;

Decree-Law 51/89/M of 21 August.

Annex 6 Civil Procedure Code, approved by Decree-Law 44,129 of 28 December 1961, published in the Supplement to the Official Gazette of Macau No. 40 of 9 October 1962 with the amendments contained in the following legislation:

Decree-Law 47,690 of 11 May 1967, published in the 4th Supplement to the Official Gazette of Macau No. 52 of 30 December 1967;

Decree-Law 323/70 of 11 July, published in the Official Gazette of Macau No. 35 of 29 August 1970;

Decree 89/73 of 7 March, published in the Official Gazette of Macau No. 11 of 17 March 1973;

Administrative Regulation 642/73 of 27 September, published in the Official Gazette of Macau No. 42 of 20 October 1973;

Administrative Regulation 439/74 of 10 July, published in the Official Gazette of Macau No. 31 of 3 August 1974;

Decree-Law 366/76 of 15 May, published in the Official Gazette of Macau No. 22 of 29 May 1976;

Decree-Law 457/80, of 10 October, published in the Official Gazette of Macau No. 45 of 8 November 1980;

Decree-Law 221/87 of 29 May, published in the Official Gazette of Macau No. 40 of 6 October 1987, ordering that Decree-Law 121/76 of 11 February, Decree-Law 605/76 of 24 July, Decree-Law 165/76 of 1 March, Decree-Law 738/76 of 16 October, Decree-Law 513-X/79 of 27 December, Decree-Law 207/80 of 1 July and Decree-Law 381-A/85 of 28 September, all of which were published in the Official Gazette of Macau No. 40 of 6 October 1987, should be applied to the territory of Macau;

Law 74/88 of 18 June 1988, published in the Official Gazette of Macau No. 32 of 8 August 1988, authorizing the extension to Macau of Decree-Law 368/77 of 3 September, Law 21/78 of 3 May, Decree-Law 242/85 of 9 July ordered to be applied to Macau by Decree-Law 437/88 of 28 November, all of which were published in the Official Gazette of Macau No. 15 of 10 April 1989.

Annex 7 Criminal Code, approved by the Decree of 16 September 1886, published in the Supplement to the Official Gazette of Macau No. 49 of 14 December 1886 with the amendments contained in the following legislation:

Decree-Law 20,146 of 1 August 1931, published in the Supplement to the Official Gazette of Macau No. 21 of 31 May 1933;

Decree-Law 32,832 of 7 June 1943, published in the Official Gazette of Macau No. 4 of 26 January 1946;

Decree-Law 35,015 of 15 October 1945, published in the Official Gazette of Macau No. 31 of 3 August 1946;

Decree-Law 36,090 of 28 March 1947, published in the Official Gazette of Macau No. 47 ot 22 November 1947;

Decree-Law 18,588 of 11 July 1930, published in the Official Gazette of Macau No. 48 of 29 November 1947;

Decree-Law 39,688 of 5 June 1954, published in the 4th Supplement to the Official Gazette of Macau No. 52 of 31 December 1954;

Decree-Law 41,074 of 17 April 1957, published in the Official Gazette of Macau No. 26 of 29 June 1957;

Decree-Law 43,440 of 27 December 1960, published in the Official Gazette of Macau No. 12 of 25 March 1961;

Decree-Law 34,540 of 27 April 1945, published in the Official Gazette of Macau No. 36 of 9 September 1961;

Decree-Law 44,202 of 21 February 1962, published in the Official Gazette of Macau No. 20 of 19 May 1962;

Law 2,138 of 14 March 1969, published in the Official Gazette of Macau No. 20 of 17 May 1969;

Decree-Law 184/72 of 31 May, published in the Official Gazette of Macau No. 25 of 22 June 1974;

Decree-Law 262/75 of 27 May, published in the Official Gazette of Macau No. 13 of 27 March 1976;

Decree-Law 145-B/77 of 9 April, published in the Official Gazette of Macau No. 24 of 11 June 1977;

Decree-Law 371/77 of 5 September, published in the Official Gazette of Macau No. 47 of 19 November 1977;

Law 27/81 of 22 August, published in the Official Gazette of Macau No. 44 of 31 October 1981.

Annex 8 Criminal Procedure Code, approved by Decree 16,489 of 15 February 1929, extended to Macau by Decree 19,271 of 24 January 1931, published in the Official Gazette of Macau No. 10 of 7 February 1931, with the amendments contained in the following legislation:

Decree 20,891 of 16 February 1932, published in the Official Gazette of Macau No. 21 of 31 May 1933, extended to Macau by Decree 19,341 of 12 February 1931, Decree 20,146 of 1 August 1931 and Decree 20,147 of 1 August 1931, all of which were published in the Official Gazette of Macau No. 21 of 31 May 1933;

Law 2,000 of 16 May 1944, published in the Official Gazette of Macau No. 27 of 6 July 1946;

Decree-Law 31,843 of 8 January 1942, published in the Official Gazette of Macau No. 48 of 29 November 1947;

Decree-Law 35,007 of 13 October 1945, published in the Official Gazette of Macau No. 14 of 4 March 1959;

Decree-Law 36,387 of 1 July 1947, published in the Official Gazette of Macau No. 19 of 7 May 1960;

Decree-Law 39,157 of 10 April 1953, published in the Official Gazette of Macau No. 31 of 1 August 1953;

Decree 39,455 of 3 December 1953, published in the Official Gazette of Macau No. 51 of 19 December 1953;

Decree-Law 40,033 of 15 January 1955, published in the Official Gazette of Macau No. 9 of 26 February 1955;

Decree-Law 41,075 of 17 April 1957, published in the Official Gazette of Macau No. 26 of 29 June 1957;

Decree-Law 42,756 of 23 December 1959, published in the Official Gazette of Macau No. 49 of 9 December 1961;

Decree-Law 43,460 of 31 December 1960, published in the Official Gazette of Macau No. 13 of 1 April 1961;

Law 2,138 of 14 March 1969, published in the Official Gazette of Macau No. 20 of 17 May 1969;

Law 2,139 of 14 March, published in the Official Gazette of Macau No. 20 of 17 May 1969;

Law 2,140 of 14 March 1969, published in the Official Gazette of Macau No. 20 of 17 May 1969;

Decree-Law 40,550 of 12 March 1956, published in the Official Gazette of Macau No. 36 of 9 September 1961;

Decree-Law 185/72 of 31 May, published in the Official Gazette of Macau No. 24 of 15 June 1974;

Decree-Law 292/74 of 28 June, published in the Official Gazette of Macau No. 28 of 13 July 1974;

Decree-Law 320/76 of 4 May, published in the Official Gazette of Macau No. 21 of 22 May 1976, rectified by the Declaration published in the Official Gazette of Macau No. 27 of 3 July 1976;

Decree-Law 352/76 of 15 May, published in the Official Gazette of Macau No. 22 of 29 May 1976;

Decree-Law 591/76 of 23 July, published in the Official Gazette of Macau No. 32 of 7 August 1976;

Decree-Law 605/75 of 3 November, published in the Official Gazette of Macau No. 47 of 19 November 1977;

Decree-Law 377/77 of 6 September, published in the Official Gazette of Macau No. 47 of 19 November 1977;

Decree-Law 437/75 of 16 August, published in the Official Gazette of Macau No. 47 of 19 November 1977;

Decree-Law 493/77 of 25 November, published in the Official Gazette of Macau No. 9 of 4 March 1978;

Decree-Law 425/85 of 25 October, published in the Official Gazette of Macau No. 13 of 30 March 1987;

Decree-Law 121/76 of 11 February, published in the Official Gazette of Macau No. 40 of 6 October 1987.

Annex 9 Basic Law of the Macau Special Administrative Region of the People's Republic of China, approved by the First Session of the Eighth National People's Congress of the People's Republic of China on 31 March 1993 [English translation].

Annex 10 The Assembly of the Portuguese Republic's resolution No. 41/92 of 31 December, published in the 3rd Supplement to the Official Gazette of Macau No. 52 of 31 December 1992 approving the Declaration applying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to Macau.

Annex 11 Announcement No. 123/93 published in the Diário da República No. 123 of 27 May, publicizing the fact that the Permanent Representative of Portugal to the United Nations had deposited with the Secretary-General of the United Nations the Declaration extending the application of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to Macau, approved by the Assembly of the Portuguese Republic's resolution No. 41/92 of 31 December.

Annex 12 Organic Statute of Macau approved in Law 1/76 of 17 February, published in a Supplement to the Official Gazette of Macau No. 9 of 1 March, with the amendments introduced by Law 53/79 of 14 September, published in the Official Gazette of Macau No. 39 of 29 September 1979 and Law 13/90 of 10 May, published in, in a rectified version, the 2nd Supplement to the Official Gazette of Macau No. 10 of 12 March 1991.

Annex 13 Law 7/90/M of 6 August, approving the Press Law.

Annex 14 Resolution of the Legislative Assembly 1/93/M of 12 March, published in the Official Gazette of Macau No. 23 of 7 June, approving the regulations of the Legislative Assembly of Macau.

Annex 15 Decree-Law 31/87/M of 1 June, creating the Standing Committee on Coordinating Social Affairs.

Annex 16 Law 14/87/M of 7 December, approving the criminal law on corruption.

Annex 17 Governor's Orders 12/GM/88 of 26 January, and 49/GM/88 of 10 May concerning the importation of labour.

Annex 18 Law 10/88/M of 6 June, regulating electoral registration, altered by Law 10/91/M of 29 August.

Annex 19 Law 12/88/M of 13 June, defining the general regime for protecting consumer rights and creating the Consumer Council.

Annex 20 Law 21/88/M of 15 August, regulating access to the law and courts.

Annex 21 Law 24/88/M of 3 October, approving the legal framework of the municipal councils, altered by Law 4/93/M of 5 July.

Annex 22 Law 25/88/M of 3 October, approving the electoral system for the Municipal Assembly.

Annex 23 Law 26/88/M of 3 October, approving the status of office-bearers in the municipalities.

Annex 24 Decree-Law 11/89/M of 20 February, establishing the use of Chinese in government documents.

Annex 25 Decree-Law 24/89/M of 3 April, approving the legal framework for labour relations in Macau, altered by Decree-Law 32/90/M of 9 July.

Annex 26 Decree-Law 128/89 of 15 April, published in the Official Gazette of Macau No. 20 of 15 May 1989, governing the validity of identity documents issued in Macau.

Annex 27 Law 7/89/M of 4 September, establishing the general framework for the regulation of advertising.

Annex 28 Law 8/89/M of 4 September, establishing the legal framework for television and radio broadcasting.

Annex 29 Decree-Law 59/89/M of 11 September, creating the Environment Committee.

Annex 30 Decree-Law 2/90/M of 31 January, regulating the entry, length of stay and establishment of residence in the territory of Macau.

Annex 31 Law 2/90/M of 3 May, establishing measures concerning illegal immigration, altered by Decree-Law 39/92/M of 20 July.

Annex 32 Decree-Law 47/90/M of 20 August, approving the norms for publishing, identifying and formulating legal documents, altered by Decree-Law 23/93/M of 24 May.

Annex 33 Decree-Law 49/90/M of 27 August, regulating the issuing of Macau temporary residence permits and defining the legal implications, altered by Decree-Law 16/91/M of 25 February and Decree-Law 55/93/M of 11 October.

Annex 34 Law 11/90/M of 10 September, creating the High Commission against Corruption and Administrative Illegality.

Annex 35 Decree-Law 61/90/M of 24 September, defining the Organic Law of the Directorate of the Judicial Police of Macau.

Annex 36 Decree-Law 76/90/M of 26 December, defining and establishing the guiding principles and aims of domestic security activities, and the bodies, forces and intervention services involved.

Annex 37 Administrative Regulation 11/91/M of 28 January, regulating press registration.

Annex 38 Law 4/91/M of 1 April, approving the electoral systems for the Legislative Assembly of Macau.

Annex 39 Governor's Order 92/GM/91 of 25 March, approving the operating norms for the Security Council.

Annex 40 Decree-Law 112/91 of 20 March, published in the Official Gazette of Macau No. 14 of 8 April 1991, unifying Macau's identification system by issuing a compulsory identity document for all residents, altered by Decree-Law 133/92 of 10 July, published in the Official Gazette of Macau No. 29 of 20 July 1992.

Annex 41 Decree-Law 28/91/M of 22 April, establishing the framework of extra-contractual civil liability of the Administration of Macau, public corporations, their office-bearers and agents in acts of public management.

Annex 42 Decree-Law 31/91/M of 6 May, approving the Lawyers' Statute, altered by Decree-Law 26/92/M of 4 May.

Annex 43 Governor's Order 106/GM/91 of 27 May, institutionalizing improved communication systems between the Administration and Macau's citizens.

Annex 44 Governor's Order 128/GM/91 of 5 August, approving the operating norms for the Security Coordination Bureau.

Annex 45 Law 11/91/M of 29 August, establishing the general framework for education in Macau.

Annex 46 Law 112/91 of 29 August, published in the Official Gazette of Macau No. 36 of 9 September 1991, establishing the basic organization of the judiciary of Macau, altered by Law 4-A/93 of 26 February, published in the Official Gazette of Macau No. 9 of 1 March 1993.

Annex 47 Decree-Law 51/91/M of 15 October, approving the status and electoral regime for members of the Consultative Council.

Annex 48 Decision of the Consultative Council of 2 October 1991, approving the regulations of the Consultative Council, published in the Official Gazette of Macau No. 41 of 15 October 1991.

Annex 49 Decree-Law 54/91/M of 21 October, establishing the rules for authorizing, practising and regulating the activities of private insurance companies.

Annex 50 Decree-Law 455/91 of 31 December, published in the Official Gazette of Macau No. 2 of 13 January 1992, elevating Chinese to the status of an official language alongside Portuguese.

Annex 51 Decree-Law 6/92/M of 27 January, regulating the issue of the new Macau resident identity card.

Annex 52 Decree-Law 7/92/M of 29 January, approving the composition, organic structure and regime of the High Commission against Corruption and Administrative Illegality.

Annex 53 Decree-Law 438/88 of 29 November, published in the Official Gazette of Macau No. 8 of 24 February 1992, approving the legal regime for passports.

Annex 54 Decree-Law 11/92/M of 24 February, approving the regulations for the award and issue of passports in Macau.

Annex 55 Governor's Order 16/GM/92 of 17 February, creating the Committee for Overseeing the Language Situation in Macau.

Annex 56 Decree-Law 17/92/M of 2 March, approving Macau's judicial system.

Annex 57 Decree-Law 18/92/M of 2 March, regulating the organization, powers, operations and procedures of the Court of Audit.

Annex 58 Decree-Law 24/92/M of 22 April, regulating the installation, operation and maintenance of security alarms.

Annex 59 Decree-Law 37/92/M of 13 July, regulating proof of residence for obtaining a resident's identity card in special cases.

Annex 60 Decree-Law 51/92/M of 17 August, altering Decree-Law 79/84/M of 21 July, regulating the issuing of the national citizen's identity card in Macau.

Annex 61 Decree-Law 55/92/M of 18 August, approving the statute of magistrates of Macau's courts and the statute of members of the Macau High Council of Justice and the Macau Judicial Council and their organic structure.

Annex 62 Law 16/92/M of 28 September, defining the rules governing confidentiality in communication and the right to privacy.

Annex 63 Decree-Law 72/92/M of 28 September, reformulating and updating the norms concerning civil protection.

Annex 64 Regulations for admission to the legal profession, approved by the Macau Lawyers' Association on 19 November 1992 and published in the Official Gazette of Macau No. 48 of 30 November 1992.

Annex 65 Governor's Order 121/GM/92 of 31 December, ratifying the Code of Ethics submitted by the Macau Lawyers' Association.

Annex 66 Decree-Law 11/93/M of 15 March, reviewing sanctions for the use, possession and carrying of arms.

Annex 67 Law 2/93/M of 17 May, regulating the right to meet and demonstrate in public places.

Annex 68 Decree-Law 30/93/M of 21 June, reorganizing the organic structure of the Legal Translation Office.

Annex 69 Decree-Law 32/93/M of 5 July approving the legal framework for Macau's financial system.

Annex 70 Resolution 1/TC/M-93 of 25 May 1993, published in the Official Gazette of Macau, 1st Series, No. 30 of 26 July, approving the Administrative Rule of the Court of Audit.

Annex 71 Law 7/93/M of 9 August, approving the [Legislative Assembly] Members' Statute, altered by Law 10/93/M of 27 December.

Annex 72 Law 8/93/M of 9 August, approving the Organic Law for the Legislative Assembly.

Annex 73 Law 64/93/M of 26 August, published in the Official Gazette of Macau, 1st Series, No. 36 of 6 September 1993, establishing the legal framework governing conflict of duties and incompatibilities for holders of political office and high-ranking public officials.

Annex 74 Decree-Law 60/93/M of 18 October, partially altering the norms regulating employment in Territorial Security.

Annex 75 Decree-Law 357/93 of 14 October, published in the Official Gazette of Macau No. 43 of 25 October, defining the terms under which civil servants of Macau can be integrated into the Portuguese civil services.

Annex 76 Announcement by the Urban Council (Leal Senado), published in the Official Gazette of Macau, 2nd Series, No. 46 of 12 November 1993, on places which can be used for meetings or demonstrations.

Annex 77 Announcement by the Islands Municipal Council, published in the Official Gazette of Macau, 2nd Series, No. 51 of 23 December 1993, on places which can be used for meetings or demonstrations.

Annex 78 Decree-Law 72/93/M of 27 December, regulating the activities of Parent-Teacher Associations.

Annex 79 Decree-Law 6/94/M of 24 January, establishing the training regime for magistrates and creating the Macau Magistrates' Training Centre.

Annex 80 Decree-Law 7/94/M of 24 January, defining the status of the post of judicial auditor.

Annex 81 Decree-Law 9/94/M of 31 January, establishing the regime for forensic and medical examinations required by law.

Annex 82 Decree-Law 14/94/M of 23 February, rectified by a declaration published in the Official Gazette of Macau, 1st Series, No. 9 of 28 February 1994 regulating the application in Macau of Decree-Law 357/93 of 14 October, recognizing the right to integration into the Portuguese civil services.

Annex 83 Decree-Law 13/94/M of 21 February, creating the Economic Council.

Annex 84 Decree-Law 60/86/M of 31 December, creating the Public Information and Assistance Centre.

Annex 85 Decree-Law 23/85/M of 23 March, establishing the legal framework for administrative actions.

Annex 86 Law 28/82 of 15 November, published in the Diário da República No. 264, establishing the organization, operation and procedures of the Constitutional Court.

Annex 87 Law 34/87 of 16 July, published in the Diário da República No. 161, defining crimes of abuse of responsibility by holders of public office.

Annex 88 Decree-Law 251/74 of 12 June, published in the Official Gazette of Macau No. 29 of 20 July 1974, providing citizens with free access, regardless of sex, to judicial posts or to the Public Prosecutor's Department, and to a career within the court system.

Annex 89 Decree-Law 47,302 of 4 November 1966, published in the Official Gazette of Macau No. 50 of 10 December 1966, approving Convention No. 100 of the International Labour Organization dealing with equal pay for men and women performing work of equal value.

Annex 90 Decree-Law 41,204 of 28 November 1960, published in the Official Gazette of Macau No. 17 of 29 April 1961, establishing the legal framework concerning anti-economic infractions and violations of public health.

Annex 91 Decree of 28 October 1868, published in the Official Gazette of Macau No. 2 of 11 January 1869, declaring that the law of 1 July 1867 concerning the application of the death penalty was thereby in force.

Annex 92 Decree of 9 June 1870, published in the Official Gazette of Macau No. 34 of 22 August 1870, abolishing the death penalty for civil crimes in all overseas territories.

Annex 93 Decree-Law 437/75 of 16 August, published in the Official Gazette of Macau No. 47 of 19 November 1977, regulating extradition.

Annex 94 Decree-Law 84/84/M of 11 August, approving the Code of Discipline of the Macau Security Forces.

Annex 95 Decree-Law 13/86/M of 8 February, approving the Public Security Police Administrative Rule, altered by Decree-Law 78/88/M of 15 August, creating the Immigration Department.

Annex 96 Decree-Law 14/86/M of 8 February, approving the Maritime and Customs Police Administrative Rule.

Annex 97 Supplementary Convention on the Abolition of Slavery, the Slave Trade Institutions and Practices Similar to Slavery, signed in Geneva on 7 September 1956, published in the Official Gazette of Macau No. 32 of 8 August 1959.

Annex 98 Convention No. 29 of the International Labour Organization on forced or compulsory labour, published in the Official Gazette of Macau No. 42 of 20 October 1956.

Annex 99 Decree-Law 39,997 of 29 December 1954, published in the Official Gazette of Macau No. 52 of 31 December 1954, extending this to the overseas provinces, with the modifications contained in Decree-Laws Nos. 26,643 and 39,688, governing the reorganization of prison services and replacing several provisions of the Criminal Code, respectively.

Annex 100 Decree-Law 34/85/M of 20 April, establishing the Territorial Security Service.

Annex 101 Decree-Law 417/71 of 29 September, published in the Official Gazette of Macau No. 42 of 16 October 1971, approving the Statute for Legal Assistance for Minors Overseas.

Annex 102 Decree-Law 1/90/M of 18 January, creating the Justice Department.

Annex 103 Decree-Law 78/88/M of 15 August, creating the Immigration Department, altering Decree-Law 13/86/M of 8 February, approving the Regulations of the Public Security Police.

Annex 104 Administrative Regulation 65/86/M of 22 March, regulating the regime of safe-conduct.

Annex 105 Decree-Law 79/84/M of 21 July, regulating the issue of the identity card, altered by Decree-Law 126/84/M of 29 December, Decree-Law 27/86/M of 22 March, Decree-Law 2/88/M of 14 January, Decree-Law 6/92/M of 27 January and Decree-Law 52/92/M of 17 August.

Annex 106 Decree-Law 24/86/M of 15 March, regulating the population's access to health care.

Annex 107 Decree-Law 43,201 of 1 October 1960, published in the Official Gazette of Macau No. 44 of 29 October 1960, approving the Convention relating to the Status of Refugees.

Annex 108 Decree-Law 33,548 of 23 February 1944 and Administrative Regulation 11,502 of 2 October 1946, published in the Official Gazette of Macau No. 13 of 29 May 1947, regulating the right to legal assistance.

Annex 109 Decree-Law 45,610 of 12 March 1964, published in the Official Gazette of Macau No. 13 of 28 March 1964, with new versions of several clauses from Decree-Law 26,643 governing the reorganization of the prison services.

Annex 110 Decree-Law 43,809 of 20 July 1961, published in the Official Gazette of Macau No. 33 of 19 August 1961, approving the Overseas Code of Judicial Expenses.

Annex 111 Decree-Law 35,007 of 13 October 1945, extended to Macau in Administrative Regulation 17,076, published in the Official Gazette of Macau No. 14 of 4 April 1959, updating some basic principles of criminal procedure.

Annex 112 Decree-Law 5/91/M of 28 January, establishing the regime for fighting illegal trafficking and consumption of drugs.

Annex 113 Decree-Law 43,089 of 11 July 1960, published in the Official Gazette of Macau No. 33 of 13 August 1960, reorganizing the police records departments.

Annex 114 Administrative Regulation 6,713 of 4 March 1961, published in the Official Gazette of Macau No. 9 of 4 March 1961, approving the regulations for the provincial archives of police records departments.

Annex 115 Decree-Law 251/71 of 11 June, published in the Official Gazette of Macau No. 46 of 13 November 1971, adapting some of the regulations of the identification services connected with issuing police record certificates.

Annex 116 Concordat between the Portuguese State and the Holy See, signed on 7 May 1940, extended to Macau by publication in the Official Gazette of Macau No. 37 of 14 September 1940.

Annex 117 Law 4/71 concerning the Bases of Religious Freedom of 21 August, published in the Official Gazette of Macau No. 5 of 2 February 1974.

Annex 118 Decree-Law 31,207 of 4 April 1941, published in the Official Gazette of Macau No. 26 of 28 June 1952, approving the Missionaries' Statute.

Annex 119 Decree-Law 46,980 of 24 April 1966, published in the Official Gazette of Macau No. 2 of 8 January 1972, approving the Code of Copyright.

Annex 120 Law 4/85/M of 25 November, enshrining protection against the illegal copying of records and videos.

Annex 121 Decree-Law 3/76/M of 23 March, regulating the right of free association, republished and duly rectified on 17 April 1976.

Annex 122 Law 1/78/M of 4 February, approving the criminal regime for secret societies.

Annex 123 ILO Convention No. 98 of 1949 on the right to organize and collective bargaining, published in the Official Gazette of Macau No. 28 of 11 July 1964.

Annex 124 Decree-Law 14/87/M of 16 March, approving the Civil Registration Code.

Annex 125 Decree-Law 87/89/M of 21 December, approving the Statute of the Macau Public Employees Association, altered by Decree-Law 52/90/M of 10 September, Decree-Law 37/91/M of 8 June, Decree-Law 1/92/M of 6 January, Law 11/92/M of 17 August, Decree-Law 70/92/M of 21 September and by Decree-Law 80/92/M of 21 December.

Annex 126 Decree-Law 484/71 of 8 November, published in the Official Gazette of Macau No. 47 of 20 November, regulating jurisdiction over minors.

Annex 127 Law 37/81 of 3 October, published in the Official Gazette of Macau No. 46 of 16 November 1981, establishing the legal framework for Portuguese nationality.